

**II. COMMITTEE ACTIONS AND FILINGS OF
THE PARTIES PRIOR TO THE AUGUST 4,
2010 HEARING ON PRE-TRIAL MOTIONS**

d. Pre-Trial Motions

- ii. Cross Motions regarding the Admission of
Judge Porteous' Immunized Testimony Before
the Fifth Circuit Special Committee**

**In The Senate of The United States
Sitting as a Court of Impeachment**

)
In re:)
Impeachment of G. Thomas Porteous, Jr.,)
United States District Judge for the)
Eastern District of Louisiana)
)

**JUDGE G. THOMAS PORTEOUS, JR.'S MOTION
TO EXCLUDE THE USE OF HIS PREVIOUSLY IMMUNIZED TESTIMONY**

NOW BEFORE THE SENATE, comes respondent, the Honorable G. Thomas Porteous, Jr., a Judge of the United States District Court for the Eastern District of Louisiana, by and through counsel, and files this Motion to Exclude the Use of His Previously Immunized Testimony.

INTRODUCTION

This is the first time in United States history that an official has been impeached after testifying under a grant of immunity. Judge Porteous testified under a grant of statutory immunity before the Judicial Conference of the Fifth Circuit about matters related to this impeachment proceeding. With the grant of immunity, Judge Porteous was assured that none of his testimony could be used against him in satisfaction of the Fifth Amendment to the Constitution. Despite this guarantee, the House now proposes to use his own testimony against Judge Porteous as a basis for his removal from office. This matter presents a number of precedents that could have a significant and deleterious impact on how Congress deals with appointed civil authorities in the future.¹

¹ This includes the effort to remove a federal judge on the basis of (1) an alleged denial of honest services (despite a recent Supreme Court decision rejecting such a theory) in Article I; (2) purely pre-federal conduct in Article II; and (3) the failure of a judicial nominee to disclose

Now, the House would add a new and disturbing element to impeachment where the accused is compelled to testify and then must face that immunized testimony as the basis for removal. The House's proposed use of this immunized testimony is contrary to all basic concepts of due process, degrades the constitutional process and tarnishes the image of the United States Senate. It premises a constitutional process of removal on the use of testimony barred under the Fifth Amendment.

BACKGROUND

After eight years of investigations touching upon Judge Porteous, the Department of Justice ("DOJ") determined that it would not bring any charges against him. Instead, unable to make out a criminal case, the DOJ filed a complaint with the Judicial Council of the Fifth Circuit. The Fifth Circuit Judicial Council (the "Judicial Council") convened a Special Investigatory Committee to review the DOJ's allegations against Judge Porteous. That Council subsequently appointed a three-judge panel to hold a hearing on Monday, October 29, 2007, chaired by Chief Judge Edith Jones. The hearing was held over the strenuous objections of Judge Porteous (representing himself at the time) who was barred from the very rights he and every other judge grant to any criminal defendant in a Federal court.

Judge Porteous was justifiably concerned about the manner in which the Judicial Council Panel compelled his testimony with a grant of immunity under 18 U.S.C. §§ 6002 and 6003. *See* Ex. 1 at 34 (Transcript of Judge Porteous's testimony before the Fifth Circuit Judicial Council

information as part of subjective questions at confirmation on what he would consider to be embarrassing or detrimental to his confirmation. In addition, this matter raises a serious due process question if the Senate declines Judge Porteous's request for a trial of sufficient length to present fully relevant testimony, as was done in the case of past impeached judges like Alcee Hastings. In contrast, Judge Porteous has been given only a five-day evidentiary hearing, despite the fact that (unlike judges like Hastings) there is no existing court record because Judge Porteous has never been charged with or tried for any crime.

Panel). Remarkably, Chief Judge Jones compelled Judge Porteous to testify before he had received the actual order granting him immunity and before he could even review the extent of the immunity granted. At the hearing, Ron Woods, appointed as counsel for the Judicial Council, admitted to Judge Jones that Judge Porteous did not receive the order before the hearing—despite the fact that the order had been signed *three weeks* before the hearing. *Id.* at 33; *see also* Ex. 2 (October 5, 2007 Order granting Judge Porteous statutory immunity). Judge Porteous asked for a continuance so that he could review the order, correctly noting that witnesses are generally allowed to see the immunity order before testifying. *See* Ex. 1 at 34. Judge Jones, however, responded that “immunity is better than non immunity, sir. Continuance is denied. You may take the stand.” *Id.* Indeed, the manner of compelling the testimony was so unclear and unusual that another member of the panel, Judge Benavides, felt the need to clarify that Judge Porteous was granted immunity and would not be testifying but for that grant of immunity. *See id.* at 46. In response, Larry Finder, co-counsel for the Judicial Council, agreed and made clear that the grant of statutory immunity is co-extensive with Judge Porteous’s Fifth Amendment right against self-incrimination. *Id.* at 47.

Notably, after hearing Judge Porteous’s testimony and completing its investigation, the Judicial Council did not make a factual finding that Judge Porteous actually committed the acts alleged by the DOJ in its complaint, and it certainly made no factual finding that he committed either treason, bribery, or other high crimes or misdemeanors. *See* Ex. 3 at 4 (Opinion of Judge Dennis, dissenting from Special Investigatory Committee opinion recommending impeachment).

Had this been a court proceeding and had Judge Porteous been found guilty, the manner in which he was compelled to testify would have been the obvious basis for an appeal. He was denied the opportunity to review and to appeal the order. Now, the House seeks to use that very

same testimony to convict him, in a complete denial of the procedural and substantive protections afforded by the Fifth Amendment.

ARGUMENT

In *Kastigar v. United States*, 406 U.S. 441 (1972), the Supreme Court held that statutory immunity “from use and derivative use is coextensive with the scope of the privilege against self-incrimination.” *Id.* at 453. That coextensive right, which precludes later use of previously immunized testimony, applies in this impeachment trial.

Judge Porteous recognizes that an impeachment trial is not a purely criminal proceeding, although it shares certain aspects. Historically – but not here – impeachments of judges have occurred after and as the result of criminal proceedings, in which the accused enjoys fundamental constitutional rights, including the right not to testify against himself. Since the 1880s, the Supreme Court has consistently held that the Fifth Amendment right against self-incrimination applies in certain types of civil proceedings that share elements of criminal proceedings. The Supreme Court has labeled such proceedings “criminal in nature” and has identified them as cases where the defendant stands to lose a property interest based on alleged misconduct. Thus, in *Lees v. United States*, 150 U.S. 476 (1893), the defendants faced \$1,000 in civil penalties for violating an act of Congress that prohibited “importation and migration of foreigners and aliens” as contract laborers. *Id.* at 478. The Supreme Court stated that “[t]his, though an action civil in form, is unquestionably criminal in nature, and in such a case a defendant cannot be compelled to be a witness against himself.” *Id.* at 480.

The Court in *Lees* noted that it had previously decided this principle in *Boyd v. United States*, 116 U.S. 616 (1886), *overruled on other grounds*, 387 U.S. 294 (1967). *See Lees*, 150 U.S. at 480-81. In *Boyd*, the Court held that “proceedings instituted for the purpose of declaring

the forfeiture of a man's property by reason of offenses committed by him, though they may be civil in form, are in their nature criminal." *Boyd*, 116 U.S. at 634. The *Boyd* Court also held that since the proceeding was of a criminal nature, the proceeding implicated the defendants' rights under both the Fourth and Fifth Amendments. *Id.* at 633.

Almost a century after first holding that the Fifth Amendment applies in some civil proceedings, the Supreme Court reaffirmed this principle, quoting *Boyd* and holding that "the Fifth Amendment applies with equal force" in cases where "money liability is predicated upon a finding of the owner's wrongful conduct[.]" *United States v. United States Coin & Currency*, 401 U.S. 715, 718 (1971). Finally, in 1980, the Supreme Court once again recognized that the Fifth Amendment is implicated in those types of civil cases where monetary penalties are involved. See *United States v. Ward*, 448 U.S. 242, 253 (1980) (stating that "[t]he question before us, then, is whether the penalty imposed in this case . . . is nevertheless so far criminal in its nature as to trigger the Self-Incrimination Clause of the Fifth Amendment") (internal quotation omitted).

Impeachment trials before the United States Senate are precisely analogous to those civil proceedings in which the Supreme Court has held that the Fifth Amendment applies. Indeed, impeachments – and particularly this impeachment – exemplify the Supreme Court's definition of just such a case. Judge Porteous is accused of misconduct, and if the Senate convicts, he will lose his most important property interests: his life tenured judgeship, salary and pension.² If convicted, he will also face the stigma of history as one of a handful of federal judges impeached

² The Supreme Court has previously held that a tenured professorship can be considered a property interest when determining whether a state college violated a professor's procedural due process right by depriving him of his position without a hearing. See *Perry v. Sindermann*, 408 U.S. 593, 603 (1972).

by the House and convicted by the Senate. This is a clear case in which “proceedings instituted for the purpose of declaring the forfeiture of a man’s property by reason of offenses committed by him, though they may be civil in form, are in their nature criminal.” *Boyd*, 116 U.S. at 634.

Moreover, the text of the Constitution itself makes many explicit and implicit references to the criminal nature of an impeachment proceeding. Most obviously, the exclusive grounds for impeachment are either crimes or framed in criminal terminology: “Treason, Bribery, or other high Crimes and Misdemeanors.” U.S. CONST. art. II, § 4. Similarly, Article III expressly excepts “cases of impeachment” from the requirement that the “Trial of all crimes . . . shall be by Jury,” an exception which would be unnecessary surplusage³ if impeachments were not otherwise within the scope of “Trial[s] of all Crimes.” U.S. CONST. art. III, § 2, cl. 4. Finally, the Senate impeachment clause of Art. I, § 3 frames impeachments as trials to occur before the Senate, which can result in a “conviction.” Indeed, the House’s own expert witness, Professor Akhil Amar, stated that “[i]mpeachment is a quasi-criminal affair, in which the Senate, sitting as a court, is asked to convict the defendant of high criminality or gross misbehavior[.]” Akhil R. Amar, *A Symposium on the Impeachment of William Jefferson Clinton: Reflections on the Process, the Results, and the Future*, 28 Hofstra L. Rev. 291, 307 (1999).

The test is not whether impeachment proceedings are criminal cases; they are not. That, however, is not the question under *Kastigar*. Rather, the question is whether impeachments are included in that class of proceedings sufficiently “criminal in nature” that the Fifth Amendment’s protections apply. In light of the relevant Supreme Court precedent, the constitutional text, and the scholarship of the House’s own expert witness, the answer to that question is an obvious yes.

³ Supreme Court precedent establishes that no term in the constitution “be treated as mere surplusage, for ‘[i]t cannot be presumed that any clause in the constitution is intended to be without effect.’” *District of Columbia v. Heller*, 128 S. Ct. 2783, 2826 (2008) (quoting *Marbury v. Madison*, 5 U.S. 137 (1803)).

Despite this clear authority demonstrating that the Fifth Amendment applies in Senate impeachment trials, the House of Representatives has stated that there is no credible basis to argue that “the Senate should not consider Judge Porteous’s . . . immunized Fifth Circuit testimony.” *See* 111 Cong. Rec. S2358 (Apr. 15, 2010); *see also* Ex. 4 (April 21, 2010 Letter from Alan Baron correcting the Senate Record). In making that argument, the House disregards Supreme Court case law, relevant constitutional text, and the scholarly analysis by its own expert, Professor Amar. Incredibly, the House argues that the concern about self-incrimination should not apply to Judge Porteous, and his testimony may be used against him, because he is a “highly educated Federal judge.” *Id.* This argument suggests that a person’s education, intellect, achievement and long service should be held against him and somehow diminish his Fifth Amendment rights. It suggests a class-based sliding scale approach to the granting of constitutional rights that is abhorrent in this nation and defies logic and legal principles. The Senate’s effort over the past 200-plus years to ensure that constitutional rights are shared equally by the least privileged amongst us should not be turned on its head to deprive the better educated and the long-serving of those same rights.

The House’s proposal to use immunized testimony from the Fifth Circuit in this impeachment trial would disregard the Judicial Branch’s grant of immunity to Judge Porteous. Congress frequently compels testimony through statutory immunity granted pursuant to 18 U.S.C. § 6005. It rightly expects its promises barring the use of the testimony in a judicial proceeding to be honored. In this case, the House seeks to disregard such promises and build a case around just such compelled testimony.

An Impeachment Trial is meant to be a symbol of the careful balancing of interests between the Branches. The removal of a federal judge is done only after the satisfaction of exacting procedural and substantive standards laid down by the Framers. The trial itself is a symbol of fairness and circumspection by a body described by the late Sen. Robert C. Byrd as “the anchor of the Republic, the morning and evening star in the American constitutional constellation.” 145 Cong. Rec. S3460-02, at 3464 (daily ed. March 3, 1995) (Statement of Sen. Robert C. Byrd). This proposed use of immunized testimony creates a symbol of a different kind – a dark cloud of abridged rights and expedited process. It does not do justice to the Constitution or this institution.

CONCLUSION

WHEREFORE, Judge Porteous respectfully requests that the Senate exclude from evidence all of Judge Porteous’s immunized testimony before the Fifth Circuit Judicial Conference Special Investigatory Committee and exclude any testimony, documents, or other evidence derived from the immunized testimony.

Respectfully submitted,

/s/ Jonathan Turley
Jonathan Turley
2000 H Street, N.W.
Washington, D.C. 20052
(202) 994-7001

/s/ Daniel C. Schwartz
Daniel C. Schwartz
P.J. Meitl
Daniel T. O’Connor
Ian L. Barlow
BRYAN CAVE LLP
1155 F Street, N.W., Suite 700
Washington, D.C. 20004

1299

(202) 508-6000

Counsel for G. Thomas Porteous, Jr.
United States District Court Judge for the Eastern
District of Louisiana

Dated: June 21, 2010

CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2010, I served copies of the foregoing by electronic means on the House Managers, through counsel, at the following email addresses:

Alan Baron – abaron@seyfarth.com

Mark Dubester – mark.dubester@mail.house.gov

Harold Damelin – harold.damelin@mail.house.gov

Kirsten Konar – kkonar@seyfarth.com

Jessica Klein – jessica.klein@mail.house.gov

/s/ P.J. Meitl

Exhibit 1

1 Justice had other documents under that grand jury subpoena log,
2 which weren't really relevant to this complaint.

3 JUDGE PORTEOUS: See, I have no way to know that
4 because I've never seen them.

10:35 5 CHIEF JUDGE JONES: As you know, Judge Porteous, the
6 grand jury investigation included a lot of people over a course
7 of years. So, we have no reason to question if the Justice
8 Department has produced those that are relevant to you.

9 JUDGE PORTEOUS: You mean people on call here for this
10:36 10 hearing?

11 CHIEF JUDGE JONES: There were people, I'm sure, who
12 are on call. There are people who pled guilty and served jail
13 time as a result of this investigation. So, I don't see why
14 those documents have anything to do with you or why they should
10:36 15 have been produced.

16 JUDGE PORTEOUS: Well, again, we're using -- I
17 understand. I'll -- okay, your Honor.

18 CHIEF JUDGE JONES: All right, sir.

19 MR. WOODS: We would call as our next witness Judge
10:36 20 Porteous.

21 JUDGE PORTEOUS: And, Judge, on that issue, I just on
22 Friday realized I was going to be given immunity and just
23 hadn't had time to adequately contemplate the testimony. I
24 mean, I've been working on everything else.

25 I would simply ask that I be given through today

36 1 to at least get my thoughts together before I am compelled to
2 testify. Mr. Woods had that immunity notice; and I just saw it
3 today, just saw it for the first time today.

4 MR. WOODS: It was provided on Friday, your Honor.

10:36 5 JUDGE PORTEOUS: Yeah, on Friday. I understand. No.
6 The log was provided on Friday.

7 MR. WOODS: Right.

8 JUDGE PORTEOUS: The document was not provided on
9 Friday, and you know that.

10:37 10 MR. WOODS: That's correct.

11 CHIEF JUDGE JONES: All right, sir. We're not going
12 to go crosswise with each other. Thank you very much.

13 JUDGE PORTEOUS: I'm sorry, Judge.

14 CHIEF JUDGE JONES: Mr. Finder will to respond.

10:37 15 MR. FINDER: Yes, thank you, Judge. Under the rules
16 under which we're operating, Rule 10C, Special Committee
17 Witness.

18 CHIEF JUDGE JONES: You want to speak up there?

19 MR. FINDER: Yeah, I'm sorry. I'll use the podium.

10:37 20 Is this better?

21 CHIEF JUDGE JONES: Yes.

22 MR. FINDER: "All persons who are believed to have
23 substantial information will be called as Special Committee
24 witnesses, including the complainant and the subject judge."

37 25 So, I think that there is no surprise here. It's

1 in the rules, which were provided a long, long time ago.

2 JUDGE PORTEOUS: I don't doubt that that's what the

3 rules say, your Honor. I'm not taking issue with that. I'm

4 taking issue with the fact that it's the first time I've been

5 given immunity, without ever seeing the document.

6 CHIEF JUDGE JONES: Well, with --

7 JUDGE PORTEOUS: I'm only asking for the rest of the

8 day.

9 CHIEF JUDGE JONES: -- immunity is better than non

10 immunity, sir. Continuance is denied. You may take the stand.

11 JUDGE PORTEOUS: All right.

12 CHIEF JUDGE JONES: Thank you.

13 JUDGE LAKE: Raise your right hand to be sworn.

14 You do solemnly swear that the testimony you

15 shall give in this proceeding will be the truth, the whole

16 truth, and nothing but the truth, so help you God?

17 JUDGE PORTEOUS: I do.

18 GABRIEL THOMAS PORTEOUS, JR., DULY SWORN, TESTIFIED:

19 DIRECT EXAMINATION

20 BY MR. FINDER:

21 Q. Judge Porteous, a little background information, please.

22 You were a judge in the 24th Judicial District

23 Court in the State of Louisiana from approximately 1984 to

24 October 1994. Is that correct?

25 A. That's correct.

38 1 Q. And prior to taking that judicial office, you were employed
2 as special counsel to the office of the Louisiana Attorney
3 General from approximately 1971 to approximately 1973. Is that
4 correct?

10:38 5 A. I believe that's correct.

6 Q. You were also a prosecutor and assistant district attorney
7 of Jefferson Parish, Louisiana, from approximately 1973 to
8 1975. Is that correct?

9 A. I'm sorry. Would you -- I'm sorry.

10:39 10 Q. I'm sorry. 1973 to approximately 1975?

11 A. I was what? I'm sorry.

12 Q. An assistant district attorney of Jefferson Parish?

13 A. I was an assistant DA from -- until I took the state bench.

14 Q. Okay. So, I'm incorrect, then?

10:39 15 A. I was an assistant DA from some -- some period of time,
16 probably '73 through '84.

17 Q. Okay. And you were also city attorney for Harahan,
18 Louisiana, from 1982 to 1984?

19 A. That sounds correct.

10:39 20 Q. Okay. You were nominated by the President of the United
21 States on August 25th, 1994, to become a United States district
22 judge. Is that correct?

23 A. Right.

24 Q. You were confirmed by the Senate on October 7th, 1994; and
39 25 at that time received your commission as a US district judge on

39 1 October 11th. Is that correct?
2 A. That is correct.
3 Q. And from that date to the present, you have been bound by
4 the Code of Conduct for United States Judges, correct?
10:40 5 A. Correct.
6 MR. FINDER: Your Honors, I'm going to be walking up
7 and back to use the Elmo; so, that's the reason I'm going to be
8 a little mobile here.
9 THE WITNESS: Put it right here if you want.
10:40 10 MR. FINDER: Okay. Thank you, sir.
11 BY MR. FINDER:
12 Q. Judge Porteous, I've marked for identification --
13 JUDGE BENAVIDES: Mr. Finder, you're going to have to
14 speak a little louder since you'll have your back to the
10:40 15 reporter.
16 MR. FINDER: Oh, forgive me. All right.
17 BY MR. FINDER:
18 Q. I've marked for identification purposes only as Exhibit 80,
19 a book called "Getting Started as a Federal Judge."
10:40 20 Judge Porteous, I'm going to -- this book, as
21 you'll see, bears a date of July of 1997, approximately three
22 years after you took the bench, correct?
23 A. It says that, yes.
24 Q. After you received your commission, Judge Porteous, you
11 25 took an oath of office, correct?

1 A. Yes.

2 Q. And that's a statutory oath, is it not?

3 A. Correct.

4 Q. I'd ask you to read along with me.

10:41 5 A. I cannot -- well, go ahead.

6 Q. Okay. Well, let's try and make it --

7 A. Just read it. I can --

8 Q. Okay. "I, your name, do solemnly swear or affirm that I

9 will administer justice without respect to persons and do equal

10:41 10 right to the poor and to the rich and that I will faithfully

11 and impartially discharge or perform all the duties incumbent

12 on me as a United States District Judge under the Constitution

13 and laws of the United States and that I will support and

14 defend the Constitution of the United States against all

10:41 15 enemies, foreign and domestic, that I will bear true faith and

16 allegiance to the same, that I take this obligation freely,

17 without any mental reservation or purpose of evasion, and that

18 I will well and faithfully discharge the duties of the office

19 of which I am about to enter, so help me God."

10:42 20 Sir, is that the oath that you took?

21 A. Yes, it is.

22 Q. Are you familiar with this book or an earlier edition of

23 it, sir?

24 A. I know we all have them in our chambers. I don't know that

25 I can tell you I've read every page of it.

12 1 Q. Okay. Let's go through a few provisions.
2 MR. FINDER: Can your Honors see that?
3 CHIEF JUDGE JONES: Barely.
4 MR. FINDER: Let me --
10:42 5 JUDGE LAKE: It's all right. No, that's better.
6 MR. FINDER: It's a little temperamental.
7 THE WITNESS: Oh, now that's much better.
8 MR. FINDER:
9 BY MR. FINDER:
10:42 10 Q. Okay. Your Honor, would you agree or disagree with these
11 statements, "New judges should review the ethical guidelines
12 set forth in the Code of Conduct for United States Judges and
13 the financial disclosure requirements of the Ethics Reform Act
14 of 1989"?
10:43 15 A. It says that.
16 Q. Do you agree with that?
17 A. Yes.
18 Q. Do you agree that once judges are assigned cases they have
19 a continuing obligation to examine periodically their own
10:43 20 personal and fiduciary financial interests and those of their
21 spouses and minor children?
22 A. I agree that's quoting what's in the paragraph.
23 Q. I know it's in there, but do you agree with what it says?
24 A. Yeah.
3 25 Q. Do you agree that, as a general matter, although judges are

1 not required to sever all ties to former clients and
2 colleagues, they clearly must be vigilant if they continue such
3 relationships?
4 A. I agree with that.
10:43 5 Q. Do you agree, under Canon 3 of the code of conduct, which
6 addresses a judge's obligation to perform the duties of the
7 judicial office impartially and diligently, requires judges to
8 disqualify themselves in any proceeding in which their
9 impartiality might be reasonably questioned?
10:44 10 A. I agree with that.
11 Q. Do you agree with Canon 3C of the code of conduct, that it
12 addresses the general issue of disqualification and states that
13 judges must disqualify themselves from all cases in which their
14 impartiality might be reasonably questioned?
10:44 15 A. I agree.
16 Q. And, Judge Porteous, do you agree that all new judges
17 should be mindful that they continue to be the subject of
18 public attention in their activities after their appointment to
19 the bench, thus, they should consider carefully whether
10:44 20 participation in outside activities impinges upon their
21 performance of their judicial responsibilities; as noted in
22 commentary to Canon 2A of the Code of Conduct for US Judges,
23 that judges must accept freely and willingly restrictions on
24 their personal conduct and activities that might be viewed as
4 25 burdensome by the ordinary citizen?

44 1 A. I agree.

2 Q. Sir, I'm going to show you what's Exhibit 18, which has

3 been offered and accepted, the Code of Conduct for United

4 States Judges, which I believe you said you're familiar with,

10:45 5 correct?

6 A. Yes.

7 JUDGE BENAVIDES: Speak up.

8 MR. FINDER: I'm sorry. Did I do it again?

9 BY MR. FINDER:

10:46 10 Q. The question was you are familiar with Exhibit 18, which is

11 the Code of Conduct for US Judges. Correct?

12 A. Yes, sir.

13 Q. And this code applies to district judges, correct?

14 A. Right.

10:46 15 Q. And the judicial conference has authorized the Committee on

16 the code of conduct to render advisory opinions concerning the

17 application and interpretation of the code when requested by a

18 judge to whom the code applies.

19 Have you ever asked that Committee for an

10:46 20 advisory opinion?

21 A. No.

22 Q. Are you familiar with Canon 1, your Honor, that a judge

23 should uphold the integrity and independence of the judiciary?

24 A. Yes.

46 25 Q. And that an independent and honorable judiciary is

46 1 indispensable to justice in our society?

2 A. Yes.

3 Q. There's a commentary here, your Honor, "Deference to the

4 judges and rulings of courts depends upon public confidence and

10:46 5 the integrity and independence of judges."

6 Skipping a line, "Although judges should be

7 independent, they should comply with the law, as well as the

8 provisions of this code."

9 Do you have any dispute with that statement --

10:47 10 those statements?

11 A. No, sir.

12 Q. Canon 2, "A judge should avoid the appearance of

13 impropriety."

14 MR. FINDER: Can you try and make this -- can you all

10:47 15 see?

16 BY MR. FINDER:

17 Q. "A judge should respect and comply with the law and should

18 act at all times in a manner that promotes public confidence in

19 the integrity and impartiality of the judiciary." Do you agree

10:47 20 with that statement, sir?

21 A. Yes, sir.

22 Q. Canon 2A, which you can read, was fairly summarized in the

23 book we just talked about. Do you agree with that, about

24 accepting -- that judges must accept certain restrictions in

7 25 their personal lives once they take the bench?

8 1 A. It seems to say that, yes.

2 JUDGE LAKE: Sir, I didn't hear your answer.

3 THE WITNESS: It seems to say that.

4 I'm sorry, Judge Lake.

10:48 5 JUDGE LAKE: Thank you.

6 BY MR. FINDER:

7 Q. And, then, in Canon 2A, a commentary, "Actual improprieties
8 under this standard include violations of law, court rules, or
9 other specific provisions of this code."Do you agree with that?

10:48 10 A. Yes, sir.

11 Q. Canon 3 says, "A judge should perform the duties of the
12 office impartially and diligently."

13 Can you follow along with me to read this?

14 "The judicial duties of a judge takes precedence
10:48 15 over all other activities. In performing the duties prescribed
16 by law, the judge should adhere to the following standards."

17 And, then, let's move over to Section C, under
18 Disqualification. "A judge shall -- shall disqualify himself
19 or herself in a proceeding in which the judge's impartiality
10:49 20 might reasonably be questioned."

21 A. Right.

22 Q. Okay. And then D, Remittal of Disqualification, "A judge
23 disqualified by the terms of 3C(1) may, instead of withdrawing
24 from the proceeding, disclose on the record the basis of
49 25 disqualification. If the parties and their lawyers, after such

9 1 disclosure and an opportunity to confer outside of the presence
2 of the judge, all agree, in writing or on the record, that the
3 judge should not be disqualified and the judge then is willing
4 to participate, the judge may participate in the proceeding.
10:49 5 This agreement shall be incorporated in the record of the
6 proceeding."

7 Did I read that accurately?

8 A. Yes.

9 Q. Were you familiar with this prior to the reading of this?

10:49 10 A. Yes.

11 Q. Okay. Canon 5, "A judge should regulate extra-judicial
12 activities to minimize the risk of conflict with judicial
13 duties."

14 Section C, A judge should -- under Financial
10:50 15 Activities, "A judge should refrain from financial and business
16 dealings that tend to reflect adversely on the judge's
17 impartiality, interfere with the proper performance of judicial
18 duties, exploit the judicial position, or involve the judge in
19 frequent transactions with lawyers or other persons likely to
10:50 20 come before the court on which the judge serves."

21 Were you aware of this provision before reading
22 it today?

23 A. Yes, sir.

24 Q. Is that a "yes," sir?

25 A. Yes, sir. I'm sorry.

0 1 Q. Okay. "A judge should not solicit or accept anything of
2 value from anyone seeking official action from or doing
3 business with the court or other entity served by the judge or
4 from anyone whose interests may be substantially affected by
10:51 5 the performance or nonperformance of official duties."Did I
6 read that accurately?
7 A. You did.
8 Q. "Except that a judge may accept a gift as permitted by the
9 Judicial Conference gift regulations. A judge should endeavor
10:51 10 to prevent a member of the judge's family residing in the
11 household from soliciting or accepting a gift except to the
12 extent that a judge would be permitted to do so by the Judicial
13 Conference gift regulations."
14 Did I read that accurately?
10:51 15 A. You did.
16 Q. And were you aware of this provision before reading it in
17 court today?
18 A. In general, yes.
19 Q. And for purposes -- under (5), "For purposes of this
10:51 20 section, 'members of the judge's family residing in the judge's
21 household' means any relative of a judge by blood or marriage
22 or person treated by a judge as a member of the judge's family,
23 who resides in the judge's household."
24 Did I read that correctly?
2 25 A. Yes, sir.

1 Q. And Number 6, "A judge should report" --
2 A. I can't see that.
3 Q. Oh, I'm sorry. Can you read that?
4 A. Yes.
10:52 5 Q. "A judge should report the value of any gift, bequest,
6 favor, or loan as required by the statutes or by the Judicial
7 Conference of the United States."
8 Did I read that correctly?
9 A. You absolutely did.
10:52 10 Q. And were you aware of that provision before?
11 A. Yes, sir.
12 Q. Under commentary to Rule 5, Canon -- it says, "Canon 5C.
13 Canon 3 requires a judge to disqualify in any proceeding in
14 which the judge has a financial interest, however small;
10:52 15 Canon 5 requires a judge to refrain from engaging in business
16 and from financial activities that might interfere with the
17 impartial performance of the judge's judicial duties; Canon 6
18 requires a judge to report all compensation received for
19 activities outside the judicial office."
10:52 20 Did I read that accurately?
21 A. You did.
22 Q. And were you aware of that prior to today?
23 A. I'm sure I was. I'm sure I was. I'm sorry.
24 Q. Canon 6, "A judge should regularly file reports of
3 25 compensation received for law-related and extra-judicial

3 1 activities."

2 Section C, "Public Reports, A judge should make

3 required financial disclosures in compliance with applicable

4 statutes and Judicial Conference regulations and directives."

10:53 5 Did I read that accurately, sir?

6 A. You did.

7 Q. And you were aware of that prior to today, correct?

8 A. Yes, sir.

9 Q. And, in fact, you have filed reports with the

10:53 10 Administrative Office of the United States courts, haven't you?

11 A. I have.

12 Q. Now, these canons of ethics for judges, that I read to you,

13 that you said you are familiar with, were not unlike the canons

14 of ethics that you were bound by as a state district judge in

10:54 15 Louisiana, correct?

16 A. I believe that's correct.

17 JUDGE BENAVIDES: Counsel, can I interrupt you just

18 for a little while --

19 MR. FINDER: Yes, sir.

10:54 20 JUDGE BENAVIDES: -- and question Judge Porteous?

21 It struck me that we discussed immunity, and it

22 struck me that Judge Porteous was advised that he would be

23 granted immunity. And it struck me that this is going on, I

24 think, in the belief that, but for that, he would not be

54 25 testifying. But we have not, in the record, actually presented

1 his testimony with the understanding -- with the explicit
2 understanding that immunity has been extended. And I don't
3 want to get down the road where we don't have that in the
4 record. But out of fairness, it would seem that is the reason
10:54 5 that Judge Porteous is testifying.

6 So, for the record, you're proceeding with the
7 request and asking for immunity for Judge Porteous?

8 MR. FINDER: You're absolutely correct, your Honor. I
9 do have the actual original application for compulsion as well
10:55 10 as the order of compulsion. Judge Porteous has a true and
11 accurate copy, but I'm happy to give him the originals.

12 THE WITNESS: I've seen it, if it's the same one you
13 gave me a copy of.

14 JUDGE BENAVIDES: I just want to get that straight
10:55 15 because there is some formality usually associated with taking
16 the Fifth Amendment.

17 MR. FINDER: Right. Right.

18 JUDGE BENAVIDES: But we've been going a long time on
19 that basis, and I didn't want to have any misunderstanding.

10:55 20 MR. FINDER: As long as you bring it up, your Honor, I
21 do need, without -- hopefully, without sounding didactic, I do
22 need to make certain that the witness knows that, while this is
23 a grant of use immunity coextensive with his Fifth Amendment
24 rights, it would not prevent him any kind of immunity from
55 25 false statement or perjury, just as in any case under 6001 and

1 6002 of the United States Code.
2 JUDGE BENAVIDES: All right.
3 CHIEF JUDGE JONES: And you're aware of that, Judge
4 Porteous?
10:56 5 THE WITNESS: Yes, ma'am.
6 MR. FINDER: May I proceed, Your Honors?
7 CHIEF JUDGE JONES: Yes, sir.
8 MR. FINDER: What exhibit number is the Louisiana Code
9 of Judicial Conduct? 86?
10:56 10 THE WITNESS: Can I just get a cup of water real
11 quick?
12 CHIEF JUDGE JONES: Sure.
13 JUDGE BENAVIDES: Yes, Judge, you can bring the
14 pitcher with you.
10:56 15 THE WITNESS: Oh, thank you. I don't want to knock
16 something over.
17 MR. FINDER: I may have misspoke. It's Exhibit 85.
18 Forgive me.
19 THE WITNESS: The list, other than this morning, that
10:57 20 I was provided, only went to Exhibit 84 as of Friday.
21 MR. WOODS: Right, and I gave you the updated list
22 this morning.
23 THE WITNESS: Well, it's in the box somewhere.
24 MR. WOODS: No. It's on top of the box.
(57 25 THE WITNESS: Maybe it is.

1 Okay. All right.

2 BY MR. FINDER:

3 Q. Mr. Porteous, I'm calling your attention to the Louisiana
4 Code of Judicial Conduct, Canon 1. I believe you testified
10:57 5 you're familiar with these.

6 It states, "The Judge shall uphold the integrity
7 and independence of the judiciary. An independent and
8 honorable judiciary is indispensable to justice in our
9 society."

10:57 10 And without taking up all the Court's time, I
11 believe you -- will you agree with me that this language is
12 almost verbatim of the language we just read from the canons of
13 federal judicial --

14 A. It seems to be. Certainly similar.

10:58 15 Q. Very similar.

16 Secondly, Canon 2, "A judge shall avoid
17 impropriety and the appearance of impropriety in all
18 activities."

19 And I believe that language is also very similar
10:58 20 to what we just read, correct?

21 A. Yes.

22 Q. Canon 3, "A judge shall perform the duties of office
23 impartially and diligently."

24 And, then, moving on to page -- to Section C of
18 25 that rule, which in the Louisiana version is titled

1 "Recusation, To Recuse."
2 It states, "A judge shall disqualify himself or
3 herself in a proceeding to which the judge's impartiality might
4 reasonably be questioned and shall disqualify himself or
10:58 5 herself in a proceeding in which disqualification is required
6 by law or applicable Supreme Court rule."
7 Did I read that accurately?
8 A. You did.
9 Q. And you are -- and these were the rules that you were bound
10:58 10 by as a judge in Louisiana, correct?
11 A. I believe that's correct.
12 Q. Canon 5, titled Extra-Judicial Activities, Section C, "A
13 judge shall refrain from financial and business dealings that
14 tend to reflect adversely on the judge's impartiality, interfere
10:59 15 with the proper performance of judicial duties, exploit the
16 judge's judicial position, or involve the judge in frequent
17 transactions with lawyers or persons likely to come before the
18 court on which he or she serves."
19 Did I read that accurately?
10:59 20 A. You did.
21 Q. That's also similar to the canons of federal ethics, isn't
22 it?
23 A. It is.
24 Q. Canon 6, "A judge shall not accept compensation or gifts
10:59 25 for quasi-judicial and extra-judicial activities, only under

1 restricted circumstances."

2 Section C, "Gifts. A judge, a judge's spouse, or

3 member of the judge's immediate family residing in the judge's

4 household shall not accept any gifts or favors which might

11:00 5 reasonably appear as designed to affect the judgment of the

6 judge or influence the judge's official conduct."

7 Did I read that accurately?

8 A. You did.

9 Q. And then there's also the Louisiana version of annual

11:00 10 financial reporting, correct?

11 A. Yes.

12 Q. Okay. And I believe the amount was raised effective 2006.

13 But even when you were a judge, it was a lower amount, correct?

14 A. I believe that's correct.

11:00 15 Q. The point is, Judge Porteous, in the more than two decades

16 that you have been a judge, whether state or federal, you have

17 been bound by very, very similar terms of judicial ethics

18 canons, correct?

19 A. Yes, somewhat, of course.

11:01 20 Q. Judge Porteous, you were married to Carmella Porteous, who

21 passed away December 22nd, 2005, correct?

22 A. Yes, sir.

23 Q. How long were you married, approximately?

24 A. Got married in '69. Thirty-six years.

11 25 Q. Isn't it true, Judge Porteous, that on March 28th, 2001,

1 you and your wife filed a voluntary Chapter 13 bankruptcy
2 petition in this district, the Eastern District of Louisiana,
3 in Docket Number 01-12363?
4 A. I know we filed, and I'm assuming that is the date number
11:01 5 and the record number.
6 Q. I'll show you the actual petition.
7 A. That's okay. I mean --
8 Q. And is it also true that the trustee assigned to the file
9 was SJ Beaulieu -- spelled B-E-A-U-L-I-E-U -- Jr.?
11:02 10 A. Correct.
11 Q. And your lawyer at the time was Claude C. Lightfoot --
12 spelled L-I-G-H-T-F-O-O-T -- Jr. Is that correct?
13 A. Correct.
14 Q. And you filed -- I'll show you what's part of Exhibit 1,
11:02 15 Bates Number SC122.
16 A. What's the Bates number? I'm sorry.
17 Q. SC12 -- 00122. One of these days I'll get the hang of
18 this.
19 A. That's fine.
11:02 20 Q. This is a voluntary petition that you filed. Isn't that
21 correct, Judge?
22 And please look it over.
23 A. It appears to be.
24 Q. Okay. Under "Name of Debtor," it says "Ortous" -- spelled
3 25 O-R-T-O-U-S -- comma, G, period, T, period, correct?

1 A. It does.

2 Q. And under "Name of Joint Debtor, Spouse," it's "Ortous" --

3 O-R-T-O-U-S -- comma, capital C, period, capital A, period,

4 correct?

11:03 5 A. That's correct.

6 Q. It has as the street address of the debtor PO Box 1723 in

7 Harvey, Louisiana, ZIP Code 70059-1723, correct?

8 A. Yes, sir.

9 Q. And the case number, the docket number, 01-12363, which I

11:03 10 believe I mentioned a few moments ago, correct?

11 A. I believe you did.

12 Q. Let me show you, Judge Porteous -- I'll come back to that.

13 Do you recognize this as an application for a

14 PO box, Judge Porteous?

11:04 15 It's SC exhibit -- Special Committee Exhibit 23,

16 Bates Number SC00599.

17 Do you recognize that, sir?

18 A. Yeah. If you tell me that's what it is, I agree. I

19 mean --

11:04 20 Q. Well, but I can't testify; so, I have to ask you those

21 questions.

22 A. I'm assuming it is an application for a post office box. I

23 can't read the print, but I have no reason to doubt what you

24 represent. I'm not trying to take issue. I agree.

4 25 Q. I know. I'm trying to be fair.

1 There's a signature here. Do you recognize that
 2 signature?
 3 A. That's mine.
 4 Q. That is your signature.
 11:04 5 And it's dated March 20th, 2001, correct?
 6 A. It is.
 7 Q. Now, March 20th, 2001, was -- and we'll get to this in a
 8 moment -- just about a week before you filed your Chapter 13,
 9 correct?
 11:05 10 A. What was the date?
 11 Yeah. I agree. I mean --
 12 Q. All right. And on your PO box request, you have an address
 13 here, 4801 --
 14 A. "Neyrey."
 11:05 15 Q. -- Neyrey -- N-E-Y-R-E-Y -- Drive in Metairie, Louisiana.
 16 That's your residence, correct?
 17 A. That's correct.
 18 Q. So, going back to Exhibit 1, the voluntary petition -- oh,
 19 wrong one -- the PO box that you have on here, you put in lieu
 11:05 20 of your home address, correct?
 21 A. That's correct.
 22 Q. Now, this voluntary petition --
 23 MR. WOODS: Larry, it's off.
 24 MR. FINDER: Oh, thank you.
 6 25 Can your Honors read that?

06 1 BY MR. FINDER:
2 Q. "Signature of debtor, individual" -- tell me if I'm reading
3 this accurately -- "I declare under penalty of perjury that the
4 information provided in this petition is true and correct."
11:06 5 And there are two signatures with the date 3-28-01, correct?
6 A. That's correct.
7 Q. And 3-28-01 was about eight days after the PO box was taken
8 out, correct?
9 A. That's correct.
11:06 10 Q. Your name is not Ortous, is it?
11 A. No, sir.
12 Q. Your wife's name is not Ortous?
13 A. No, sir.
14 Q. So, those statements that were signed -- so, this petition
11:06 15 that was signed under penalty of perjury had false information,
16 correct?
17 A. Yes, sir, it appears to.
18 Q. I'll show you something else on this petition, Judge
19 Porteous. There's a list of unsecured creditors, and I'm
11:07 20 referring now to Bates Number Page SC00126.
21 A. All right.
22 Q. Regions Bank?
23 A. Yes, sir.
24 Q. That's a bank you've done business with?
07 25 A. Yeah, I did some business with them.

37 1 Q. Right. And Regions Bank is on this voluntary petition,
2 correct?
3 A. I assume that's the petition, yes, sir. I mean --
4 Q. Well, we'll go back to the first page.
11:07 5 A. Okay.
6 Q. Voluntary petition?
7 A. All right. Yeah, it's on there.
8 Q. But if Regions Bank or any other unsecured creditor such as
9 these were to get word that a GT Ortous had filed bankruptcy,
11:08 10 they wouldn't necessarily know it was you, would they, unless
11 they ran the Social Security number?
12 A. If they had have got notice, you're correct.
13 Q. Now, let's jump ahead a little bit. Still in Exhibit 1 --
14 A. All right.
11:08 15 Q. -- and I'm going to refer you and the Court to Bates
16 Number SC120. This is an amended voluntary petition, is it
17 not?
18 A. Yes, sir.
19 Q. This time the name of the debtor is Gabriel T. Porteous,
11:08 20 Jr. That's you, correct?
21 A. Yes, sir.
22 Q. And Carmella A. Porteous, the joint debtor, your wife,
23 correct, sir?
24 A. Yes, sir.
18 25 Q. This time the address is 4801 Neyrey Drive, Metairie,

1 Louisiana, correct?

2 A. Yes, sir.

3 Q. This petition -- blow this up a little bit; that's about as

4 clear as I can make it -- was signed by you and your wife on

11:09 5 April 9th. Those are your signatures, correct?

6 A. Yes, sir.

7 Q. And the date is April 9th, correct?

8 A. Yes, sir.

9 Q. And your attorney's name, Claude Lightfoot, is on there,

11:09 10 also?

11 A. Right.

12 Q. So, between -- strike that.

13 After your voluntary -- your amended petition was

14 filed, there was an order of recusal entered in your bankruptcy

11:09 15 case, in the matter of Gabriel T. Porteous, Jr. and Carmella A.

16 Porteous, an order of recusal -- I'm going to have to -- and

17 the order, which was dated June 1st, 2001, says it is ordered

18 that the three judges of the US Bankruptcy Court for the

19 Eastern District of Louisiana, naming the three judges, are

11:10 20 hereby recused from the case, correct?

21 A. Yes, sir.

22 Q. And then procedurally, your case was temporarily assigned

23 to Judge William R. Greendyke on assignment to the Eastern

24 District of Louisiana, correct?

o 25 A. Right.

10 1 Q. And that's the same cause number?
2 A. Yes, sir.
3 Q. Signed by then Chief Judge Carolyn Dineen King of the Fifth
4 Circuit, correct?
11:10 5 A. Right.
6 Q. I don't believe I stated the date. Judge Greendyke was
7 assigned to this -- at least the order of Judge King assigns
8 Judge Greendyke June 4th, 2001. Is that accurate?
9 A. Yes, sir.
11:11 10 Q. Judge Porteous, we've already talked about Claude Lightfoot
11 being your attorney.
12 Jacob J. Amato, do you know Jacob Amato, Jake
13 Amato?
14 A. Absolutely.
11:11 15 Q. He is a lawyer, correct?
16 A. Yes, sir.
17 Q. And he is a friend of yours. Isn't that correct?
18 A. Yes, sir.
19 Q. Warren A. Forstall, Jr., also known as Chip?
11:11 20 A. Yes, sir.
21 Q. He is a lawyer?
22 A. Yes, sir.
23 Q. And he is your friend, correct?
24 A. Yes, sir.
11 25 Q. Robert G. Creely, again, a lawyer and a friend of yours?

1 A. Yes, sir.

2 Q. Don C. Gardner, a lawyer and a friend of yours?

3 A. Yes, sir.

4 Q. Leonard L. -- also known as Lenny -- Levenson, your friend

11:11 5 and an attorney, right?

6 A. Yes, sir.

7 Q. Joseph Mole, an attorney?

8 A. Yes, sir.

9 Q. Not one of your close friends?

11:12 10 A. We've never gone anywhere together. That would be a

11 correct statement.

12 Q. And Rhonda Danos has been your -- D-A-N-O-S -- has been

13 your secretary and assistant for more than 20 years now,

14 correct?

11:12 15 A. Since I was on the state bench. Twenty-three years.

16 Q. Twenty-three years.

17 Okay. Judge Porteous, before you filed your

18 voluntary petition for bankruptcy in March of 2001, let's go

19 back to the year -- calendar year 2000.

11:13 20 A. All right.

21 Q. You had engaged Mr. Lightfoot as your counsel in the latter

22 part of 2000, correct?

23 A. I knew it was in 2000. I don't remember the exact date;

24 but if that's what you say, I'm sure it is.

3 25 Q. Well, I will refresh your recollection.

3 1 But would you agree with me that at least by
2 November, December of 2000 he was your lawyer?
3 A. I believe that's correct, yeah.
4 Q. Now, after bankruptcy, you had a meeting with the trustee,
11:13 5 SJ Beaulieu, correct?
6 A. After what?
7 Q. After bankruptcy was filed.
8 A. After it was filed, that's correct.
9 Q. And you recall that Mr. Beaulieu handed you a pamphlet
11:13 10 called "Your Rights and Responsibilities in Chapter 13," which
11 we have marked as the Committee's Exhibit 11?
12 A. I believe that's -- yeah, right.
13 Q. And it bears the name of Mr. Beaulieu and has his local
14 New Orleans phone number?
11:14 15 A. Yes, sir.
16 Q. That is on Bates Page 399.
17 I'm sorry. I have my back to you.
18 A. All right.
19 Q. Calling your attention to this exhibit, there are
11:14 20 enumerated paragraphs. Paragraph 6, follow me while I read.
21 "Credit While in Chapter 13. You may not borrow money or buy
22 anything on credit while in Chapter 13 without permission from
23 the bankruptcy court. This includes the use of credit cards or
24 charge accounts of any kind."
14 25 Did I read that accurately, sir?

1 A. You did.
2 Q. And do you recall reading that and discussing that with
3 Mr. Beaulieu?
4 A. I don't specifically recall it, but I'm not saying it
11:14 5 didn't happen.
6 Q. All right. Do you recall, on or about May 9th, 2001,
7 having a -- what's called a 341 bankruptcy hearing, where
8 Mr. Beaulieu as trustee was present; your attorney,
9 Mr. Lightfoot, was present; and you were present?
11:15 10 A. Yes, sir, I remember meeting with Mr. Beaulieu.
11 Q. And that meeting was recorded, if you -- do you recall
12 that?
13 A. I believe that's correct, yeah, tape recorded.
14 Q. Right.
11:15 15 Do you recall Mr. Beaulieu stating the following?
16 "Any charge cards that you may -- you have you cannot use any
17 longer. So, basically, you're on a cash basis now.
18 "I have no further questions except have you made
19 your first payments."
11:15 20 Did I read that accurately?
21 A. Yes, sir.
22 Q. So, you were told by Mr. Beaulieu that you couldn't incur
23 any more credit there, on credit cards, correct?
24 A. I'm not sure it was there, but I'm sure it was part of the
16 25 explanation at some point.

1 Q. Well, going back to --
2 A. When you ask -- I only meant in reference to the statement.
3 Yes, it's --
4 Q. Right.
11:16 5 A. -- contained in there, and I knew that.
6 Q. And it was your understanding -- and that's what I'm trying
7 to find out, sir -- that you couldn't incur more credit while
8 in bankruptcy, correct?
9 A. That's correct.
11:16 10 Q. Okay. Now, on June 2nd, are you familiar with the order
11 signed by Bankruptcy Judge Greendyke?
12 And this is from Exhibit 1, Bates Number SC50,
13 Exhibit 1 being the certified copy of the bankruptcy file.
14 "It is ordered that," going down to Number 4,
11:16 15 "the debtors shall not incur additional debt during the term of
16 this plan except upon written approval of the trustee."
17 Did I read that correctly?
18 A. You did.
19 Q. Was that your understanding at the time?
11:17 20 A. In the order, it was.
21 JUDGE LAKE: What's the date of that document?
22 MR. FINDER: July 2nd, 2001, was the docket date. It
23 was signed by Judge Greendyke June 28th, 2001.
24 JUDGE LAKE: Thank you.
17 25 BY MR. FINDER:

18 1 Q. Judge Porteous, we talked a little bit about the Ethics in
2 Government Act earlier, the Ethics in Government Act of 1978,
3 which has to do with your judicial filings. Under Title 5,
4 United States Code Appendix Section 101, et seq., "Judicial
11:18 5 officers" -- and tell me if you agree with this -- "Judicial
6 officers shall include a full and complete statement with
7 respect to the source, type, and amount or value of income from
8 any source, other than the current employment by the United
9 States, received during the preceding calendar year aggregating
11:18 10 \$200 or more in value."

11 Is that your understanding, sir?

12 A. Right.

13 Q. And the law goes on to state that it must be reported --
14 "the identity of the source, a brief description, and the value
11:18 15 of all gifts aggregating more than \$250, received from any
16 source other than a relative of the reporting individual during
17 the preceding calendar year."

18 A. Yes, sir.

19 JUDGE BENAVIDES: For what year is that?

11:19 20 MR. FINDER: This is just from the statute, your
21 Honor.

22 JUDGE BENAVIDES: All right. I think those gift
23 amounts vary from year to year.

24 MR. FINDER: Actually, they were lower; and these are
19 25 the current amounts.

9 1 BY MR. FINDER:

2 Q. So, what -- the amounts I just read to you apply to today.

3 When you first took the bench, presumably they were slightly

4 lower?

11:19 5 A. Presumably, yes.

6 Q. Okay. And these have to do with income and gifts?

7 A. Right.

8 Q. As I just read?

9 A. Yes, sir.

11:20 10 Q. Judge Porteous, you're familiar with the term "marker,"

11 aren't you?

12 A. Yes, sir.

13 Q. Would it be fair to state that, "A marker is a form of

14 credit extended by a gambling establishment, such as a casino,

11:20 15 that enables the customer to borrow money from the casino. The

16 marker acts as the customer's check or draft to be drawn upon

17 the customer's account at a financial institution. Should the

18 customer not repay his or her debt to the casino, the marker

19 authorizes the casino to present it to the financial

11:20 20 institution or bank for negotiation and draw upon the

21 customer's bank account any unpaid balance after a fixed period

22 of time." Is that accurate?

23 A. I believe that's correct and probably was contained in the

24 complaint or -- or the second complaint. There's a definition

20 25 contained.

40 1 Q. And you have no quarrel with the definition?
2 A. No, sir.
3 Q. Okay. Judge Porteous, if markers are a form of borrowing
4 or an extension of credit, by definition, would you agree that
11:21 5 from approximately August 20th to 21st, a two day period in
6 2001, you borrowed approximately \$8,000 from Treasure Chest
7 Casino in Kenner, Louisiana, by taking out approximately eight
8 1,000-dollar markers over a two day period?
9 A. Well, did I sign \$8,000 worth of markers? You have records
11:21 10 that suggest I did that. I agree with you.
11 Q. Okay.
12 A. The issue is that we haven't -- I have an issue with
13 whether that's credit. The statement itself says it acts like
14 a check against your account. Now, I did not have an
11:21 15 8,000-dollar line of credit at -- where was that? Treasure
16 Chest?
17 Q. Treasure Chest. I didn't ask you about a line of credit,
18 though.
19 A. I understand, but I'm explaining to you why that's
11:21 20 misrepresentative.
21 Q. Okay. Well --
22 A. Those are just repetitive 1,000 -- had I written a check
23 for a thousand, I do not believe I would have been in violation
24 of any court order.
72 25 JUDGE BENAVIDES: But you're saying that you didn't

1 not -- for instance, you could not sign a marker for \$8,000
2 because that was above your limit but that would not have
3 precluded you from making out eight different markers for
4 \$1,000 during a two day period?

11:22 5 THE WITNESS: Only if that line -- only if I had the
6 funds for the line of credit. In other words, I may have
7 signed a thousand dollar marker, played a little while, won,
8 paid it back. That's what it sounds like to me.

9 I have no specific recollection of that, Judge.
11:22 10 But that's what I'm saying, yes, sir.

11 JUDGE BENAVIDES: So, you're not disputing that there
12 may have been eight markers for \$1,000. What you're saying is
13 that at any one time you dispute that you owed \$8,000.

14 THE WITNESS: That's correct, your Honor. I couldn't
11:22 15 get it. I mean --

16 JUDGE BENAVIDES: I understand what you mean.

17 BY MR. FINDER:

18 Q. Judge Porteous, I'm going to show you what's from
19 Exhibit 54, Bates Number SC1436. These are records from the
11:23 20 Treasure Chest Casino in Kenner, Louisiana. And we'll have
21 more testimony about this later through Agent Horner.

22 But just by way of illustration, you see where it
23 has "MRK," "marker"?

24 A. Right.

25 Q. And it shows various 1,000-dollar markers?

1 A. Uh-huh.
2 Q. And remember, these were taken out August 20 and 21, the
3 dates --
4 A. Well, that's not those dates.
5 Q. That's the wrong page. Here we go.
6 JUDGE LAKE: What exhibit is that?
7 MR. FINDER: It's SC1438. I had the wrong page.
8 MR. WOODS: Exhibit 54.
9 MR. FINDER: Exhibit 54.
10 BY MR. FINDER:
11 Q. August 21st, '01, you were in Chapter 13 bankruptcy,
12 correct?
13 A. Yes, sir.
14 Q. Let's look at this entry. "MK" for "marker"?
15 A. Uh-huh.
16 Q. Taken out August 21 in the amount of a thousand dollars?
17 A. Uh-huh.
18 Q. Paid back September 9th, correct?
19 A. If that's what it says, yeah.
20 Q. That's what it says.
21 Next entry highlighted, marker, 8-21-01,
22 apparently paid back right way?
23 A. Right..
24 Q. Next marker, also -- also for a thousand dollars, not paid
25 back till September 9th?

1 A. All right.

2 Q. Next marker, August 21, a thousand dollars, not paid back

3 till September 15, correct?

4 A. It looks like that, yeah. Yeah.

11:24 5 Q. This is --

6 A. Yes. I got it.

7 Q. I don't think it's going to --

8 JUDGE LAKE: So, the net effect of this was that

9 \$3,000 of the 8,000 was paid back at a later date. Is that

11:24 10 what the document shows?

11 MR. FINDER: Yes, sir.

12 JUDGE LAKE: Approximately within a month of that?

13 MR. FINDER: That's correct. It wasn't just taking

14 out a marker and paying it back within hours or the same day.

11:25 15 JUDGE LAKE: So, 5,000 was paid back; 3,000 was

16 some -- some form of extension of credit?

17 MR. FINDER: That's correct, that's what this record

18 tends to show.

19 JUDGE BENAVIDES: So, let's say on March 21st at the

11:25 20 end of the day there would have been outstanding balance on the

21 markers --

22 MR. FINDER: That's correct.

23 JUDGE BENAVIDES: -- for a debt exceeding the \$1,000?

24 MR. FINDER: Yes, sir.

25 JUDGE BENAVIDES: And you could actually figure this

1 out on a daily basis?

2 MR. FINDER: Yes, sir. And we'll get into greater
3 detail on that later but this is an introduction to it and that
4 is correct.

11:25 5 BY MR. FINDER:
6 Q. We could do the same exercise for all of them for -- that
7 are listed in the charge. For example, on October 13th, 2001,
8 you borrowed approximately a thousand dollars Treasure Chest in
9 the form of two 500-dollar markers.

11:26 10 Yeah, here it is.
11 MR. FINDER: That's the best I can do. I hope you can
12 read it.

13 BY MR. FINDER:
14 Q. And those apparently were paid back the same day, correct?

11:26 15 A. Yes, sir.

16 CHIEF JUDGE JONES: What page number is that?
17 MR. FINDER: This is Page 1437.
18 CHIEF JUDGE JONES: Okay.

19 BY MR. FINDER:
11:27 20 Q. But, then, on October 17th and 18th -- and I'm talking
21 about the same exhibit, Pages 1436 and '37 -- there were -- can
22 you read this, Judge Porteous?
23 A. If you'll stop moving it, I might be able to.
24 Q. I don't mean to get you dizzy.

17 25 A. Yeah. Two 500. Well, five --

7 1 Q. Okay. On October 17th and 18th, you borrowed in excess of
2 \$5900 from Treasure Chest, taking out approximately ten markers
3 of various denominations over the two days, 4400 of which was
4 paid back on November 9th. Do you recall that?

11:27 5 A. I don't recall it. I'm sorry.
6 That's what year?

7 Q. If that's what the records show, though, you don't dispute
8 it?

9 A. If that's what the record says, the record says it.

11:28 10 Q. Okay. We'll go into that with Agent Horner.
11 JUDGE LAKE: Do you have a summary exhibit which shows
12 what the -- the dates the items were paid? In other words,
13 there's a portion of this 5900 apparently was repaid the same
14 day and the balance was paid the next month?

11:28 15 MR. FINDER: We believe our FBI witnesses will be able
16 to summarize that. This was just an introduction to it.

17 MR. WOODS: To answer your question, we do not have a
18 specific chart summarizing that but we do have charts
19 summarizing gambling debt.

11:28 20 JUDGE BENAVIDES: But the records themselves reflect
21 the date of payment?

22 MR. WOODS: Yes, sir.

23 JUDGE BENAVIDES: So, whether we have a summary person
24 or not, we could figure those things out?

25 MR. FINDER: They're all --

1 MR. WOODS: The agent will tell us.

2 JUDGE LAKE: You might ask the agent to be attuned to

3 do that.

4 MR. FINDER: I think he's been so instructed.

11:29 5 BY MR. FINDER:

6 Q. We've talked about the filing of your bankruptcy, your

7 Honor, and not incurring new debt. That was in the pamphlet,

8 that was in the court order, and that was in the recorded

9 hearing. Do you remember those?

11:29 10 A. Yes, sir.

11 Q. Okay. Judge Porteous, on March 28th --

12 A. What year?

13 Q. 2001.

14 A. Okay.

11:29 15 Q. Following the filing of your Chapter 13 bankruptcy

16 petition, you and Mrs. Porteous did, in fact, incur additional

17 credit card debt on your Fleet Credit Card. Do you recall

18 that?

19 A. I do not recall that. I believe the exhibit says it's my

11:29 20 wife's card, but I don't remember that.

21 Q. Your wife was your co-debtor on the bankruptcy petition,

22 was she not?

23 A. She was.

24 Q. And the bankruptcy -- we'll get into this later; but the

29 25 bankruptcy schedule required all credit cards, everything, to

1 be scheduled, to be listed, correct?
2 A. Right.
3 And what date was that? March 28th, you said?
4 I'm sorry.
11:30 5 Q. March 28th, 2001 --
6 A. Yes.
7 Q. -- following the bankruptcy, the original petition,
8 correct?
9 A. Yes.
11:30 10 Q. All right. Now, as of March 5th -- and I'm referring to
11 Exhibit 21 -- okay. Showing you what's Exhibit 21, a statement
12 from Fleet Credit Card, Judge.
13 A. Right.
14 Q. You'll notice that it's Account Number 5447195123210658,
11:30 15 correct?
16 A. Yes, sir.
17 Q. And from Fleet Credit Card Service for the account of
18 Carmella Porteous, right?
19 A. Right.
11:31 20 Q. Now, if you look at these dates under the account
21 transactions, you'll see from March 5th through March 19th,
22 correct?
23 A. I can't see it, but I'm satisfied it says that. I just
24 can't see --
21 25 Q. Well --

11:11 1 A. I'm not disputing it says that, counsel.
2 Q. All right. This is -- March 5th is right before the
3 bankruptcy, right?
4 A. Yes, sir.
11:31 5 Q. March 19th we're in the bankruptcy -- we're into the
6 bankruptcy period, correct?
7 A. Well, before the bankruptcy was filed; but you're right.
8 Q. March 28th. If you'll look at March 8th, you'll see that
9 this credit card in the amount of \$157.99 was used at Harrah's
11:31 10 Casino in New Orleans.
11 Well, maybe you can't see it; but I'll be happy
12 to show you.
13 A. No. I'm satisfied you're not misrepresenting it.
14 MR. WOODS: Your Honor, you have documents in the
11:32 15 boxes, that he's using, if you want to refer to them.
16 THE WITNESS: Well, I don't want to -- I have to stay
17 up here. I don't want to necessarily -- I mean, I'm not --
18 MR. WOODS: I could move them there if you want me to.
19 THE WITNESS: I don't dispute he's reading this
11:32 20 correctly. I jut -- he asked me could I see it, and I just
21 can't see it.
22 BY MR. FINDER:
23 Q. Now, again, bankruptcy was March 28th, the amended petition
24 was April 9th, correct?
2 25 A. Right.

1 Q. I'm going to show you now, Judge Porteous, from Exhibit 1
2 the Chapter 13 schedules and plan.
3 A. All right.
4 Q. This will be a little bigger and easier to read, hopefully.
11:32 5 This is in your case, with your docket number,
6 submitted by Claude Lightfoot, your attorney, correct?
7 A. Yes, sir.
8 Q. And I wish you did have it in front of you, and I'll show
9 you mine.
11:33 10 A. I'll pull it out if it's --
11 Q. But I would like you to tell me where Fleet Credit Card is
12 listed in here on the schedule of your credit cards.
13 A. Well, if it's not listed, it's not listed.
14 Q. So, you'll take my word it's not listed?
11:33 15 A. Yeah.
16 Q. Okay.
17 A. I don't know whether it was in existence, whether it was
18 paid off or not. I don't know anything about that. I mean, as
19 I'm sitting here, I don't recall.
11:33 20 Q. Well, whether it was paid off or not -- let's look at the
21 schedule -- I believe it's at Schedule F -- which lists
22 numerous credit cards --
23 A. All right.
24 Q. -- such as American Express at Surety Bank, Bank of
4 25 Louisiana MasterCard, Chase Platinum MasterCard, Citibank

1 Advantage, Citibank Advantage. The list goes on.
2 A. Right.
3 Q. This is in alphabetical order. Fleet does not appear,
4 correct?
5 A. Does not appear.
6 Q. And is it your testimony that if it was paid off it
7 wouldn't have to be on this list? If you had a zero balance on
8 the date this was filed, it wouldn't have to be on the list?
9 A. Well, it was not a -- if there was no debt, they weren't a
10 credit, to my understanding. It says "creditors' names." The
11 ones you -- as I understood, the instruction was that you owed
12 money to.
13 Q. Well, when you use a credit card, it's an extension of
14 credit, correct?
15 A. Correct.
16 Q. So, you pay it?
17 A. Right.
18 Q. So, if it's not on this list because it has a zero balance
19 and then you use it to go to JC Penney or the casino and you
20 rack up credit on it, that's incurring credit, incurring debt?
21 A. That's incurring additional credit, correct.
22 Q. Okay.
23 JUDGE LAKE: Was credit extended on that account after
24 the date of the bankruptcy filing?
25 MR. FINDER: I think the evidence -- they were

1 showing, Judge, that the card was not listed but was used as a
2 credit card after the date of the bankruptcy and the amended
3 petition of bankruptcy.

4 JUDGE BENAVIDES: So, it wasn't included in the list
11:35 5 of creditors while the card had been used before and -- before
6 the petition was filed and prior to the payment that was made
7 for the charge upon the card?

8 MR. FINDER: That's correct.

9 JUDGE BENAVIDES: So, you're contending there was a
11:35 10 transaction existing --

11 MR. FINDER: That's my next exhibit.

12 JUDGE LAKE: It was used -- I guess to follow up, and
(13 it was used after the bankruptcy filing? Is that what you
14 said?

11:35 15 MR. FINDER: Yes, sir. That's my next exhibit.

16 JUDGE LAKE: All right. Sorry.

17 BY MR. FINDER:

18 Q. From Exhibit 21, also --

19 A. All right.

11:35 20 Q. -- Bates Page 592, again, same account number, Fleet Credit
21 Card, your wife's name?

22 A. Right.

23 Q. Now, it shows here purchases and cash advances, \$734.31,
24 correct?

6 25 A. Yes, sir.

1 Q. Do you see that?
2 Okay. And this credit card was used throughout
3 the month of May and June, correct?
4 You can see the entries on the left-hand side,
11:36 5 highlighted in the yellow, one of whom -- one entry which is in
6 red for the Treasure Chest, which is á casino, is it not?
7 A. Yes, sir.
8 Q. And that's \$174.99, correct?
9 A. That's what it says.
11:36 10 Q. So, if it's on this statement, that means there was an
11 extension of credit, correct?
12 A. That appears to be correct.
13 Q. Okay. Moving on to the next month's statement, also from
14 Exhibit 21, Bates Page 593, would you agree, Judge Porteous,
11:36 15 this is the same account, same account number?
16 A. (Nodding head.)
17 Q. Is that a "yes"?
18 A. Yeah.
19 Q. Okay. And from June 15th to July 18th -- and this is the
11:37 20 best copy we have. So, I know it's a little hard to read.
21 This card was used, including for Harrah's in New Orleans, for
22 \$91.99 and Treasure Chest for \$68.99. I'll be happy to show
23 you this..
24 A. No. I'm satisfied that's what you're reading.
17 25 Q. All right. Judge Porteous, are you aware that -- strike

1 that.

2 Let's go back to the Chapter 13 schedules and

3 plans, which, again, is from Exhibit 1, starting with Bates

4 Number 91.

11:38 5 Judge Porteous, would you agree that you did

6 conceal assets and income from the bankruptcy estate and from

7 your attorney by filing false and misleading schedules with the

8 bankruptcy court and signing them under penalty of perjury?

9 A. I would not agree with that.

11:39 10 Q. All right.

11 JUDGE BENAVIDES: Counsel, I hesitate to interrupt

12 you. And perhaps you will get into this at a later time; but

13 before we leave Fleet, your record evidence suggests that a

14 number of charges on Mrs. Porteous' card prior to and during

11:39 15 the time that the bankruptcy petition or case was on file --

16 MR. FINDER: Yes.

17 JUDGE BENAVIDES: -- with the bankruptcy judge. Do

18 you intend at a later time or not to present evidence with

19 respect to payments made with -- during that period of time and

11:39 20 when the payments were made and how the -- and who made those

21 payments?

22 MR. FINDER: We do intend to show evidence that the

23 card was paid off in full through a check by Rhonda Danos. But

24 I'm just not there yet, but I will get there.

10 25 JUDGE BENAVIDES: All right. So, you'll get to that

1 and who -- who authorized payments and things like that?

2 MR. FINDER: Yes, sir.

3 JUDGE BENAVIDES: The judge had mentioned something

4 about it was his wife's account, and I wanted to --

11:40 5 MR. FINDER: That's correct.

6 JUDGE BENAVIDES: All right."

7 BY MR. FINDER:

8 Q. All right. Judge Porteous, again, from the Exhibit 1,

9 starting with Bates Number 91 --

11:40 10 A. All right.

11 Q. -- the Chapter 13 schedule and plan, we've already talked

12 about?

13 A. Yes, sir.

14 Q. Okay. Let's go through this for a moment.

11:40 15 Under Schedule B, "Personal Property."

16 A. All right.

17 Q. "Type of property, checking, savings, or other financial

18 accounts, certificates of deposit, shares in banks, savings and

19 loan, thrift, building and loan, homestead association, or

11:41 20 credit unions, brokerage houses, or cooperatives."Did I read

21 that accurately?

22 A. Yes, sir.

23 Q. And you listed Bank One Checking Account 002379554. Is

24 that correct?

11 25 A. That's correct.

1 Q. And the current value of that interest is \$100, correct?
2 A. Yes, sir.
3 Q. And that's on Page 95?
4 A. Bates Page 95.
11:41 5 Q. Bates Page 95. Bates Page 96, Schedule B, Question 17,
6 "Other liquidated debts -- other liquidated debts owing debtor,
7 including tax refunds, give particulars." And in the next box,
8 it's checked off "none," correct?
9 A. Yes, sir.
11:42 10 Q. Attached to this exhibit, starting on Bates Page 112, the
11 statement of financial affairs, are you familiar with that,
12 sir?
13 A. Yes, sir.
14 Q. And on the last page of that statement of financial
11:42 15 affairs, with Bates Number SC116?
16 A. Right.
17 Q. "I declare under penalty of perjury that I have read the
18 answers contained in the foregoing statement of financial
19 affairs and any attachments thereto and they are true and
11:42 20 correct," dated April 9th, '01, the date of the amended
21 petition, signed by you and your wife, correct?
22 A. Yes, sir.
23 Q. So, you would agree with me, Judge Porteous, this is a
24 document that had a jurat that required that it be signed --
13 25 well, that it be signed under penalty of perjury, correct?

3 1 A. Yes, sir. You just read that.

2 Q. Right. There was another one. This -- that had to do with

3 statement of financial affairs.

4 On Page 111, "Declaration concerning debtors'

11:43 5 schedules," just about the schedules. Now, "Declaration under

6 penalty of perjury by individual debtor," it states, "I declare

7 under penalty of perjury that I have read the foregoing summary

8 and schedules consisting of 16 sheets plus the line summary

9 page and that they are true and correct to the best of my

11:43 10 knowledge, information, and belief," dated April 9th, '01,

11 signed by you and your wife, correct?

12 A. Right.

13 Q. Isn't it true, Judge Porteous, that although you replied

14 "none" to "tax returns," that you and your wife filed for a

11:44 15 federal tax refund on March 23rd, 2001, in the amount of

16 \$4,143.72, which was just five days before your original

17 Chapter 13 petition was filed? Do you recall that?

18 A. I know we filed for a tax refund. ..

19 Q. All right. Let me show it to you.

11:44 20 Exhibit 24, do you recognize this as being your

21 1040 return?

22 A. Yes, sir.

23 Q. For tax year -- for 2000 --

24 A. 2000.

4 25 Q. -- correct?

1 And this is Bates Page 600?

2 A. Right.

3 Q. This is going to be tough to read, but feel free to look at

4 your copy.

11:45 5 Under the section "Refund," which is sort of cut

6 off on my copy, Line 67a, "Amount of Line 66 you want refunded

7 to you, \$4,143.72" --

8 A. Yes, sir.

9 Q. -- correct?

11:45 10 It's signed, again under penalty of perjury, by

11 you and your wife on March 23rd, 2001, correct?

12 A. Yes, sir.

13 Q. And has your occupation as judge and your wife -- your

14 wife's occupation as housewife?

11:45 15 A. Right.

16 Q. And this is on Page 601, correct, Bates page?

17 A. Yes, sir.

18 Q. March 23rd, 2001, less than a week before you filed

19 Chapter 13, correct?

11:45 20 A. Yes, sir.

21 Q. And on your schedule, you put that you had no refund?

22 A. When that was listed, you're right.

23 Q. Okay. From your Exhibit 25, from your Bank One bank

24 account, Judge G. Thomas Porteous, Jr., Account 6902379554 --

6 25 actually, that number is a little bit different than the one

1 that was on the schedule. Maybe there was a typo.

2 If you look on Schedule B that we've read before,

3 this account starts with 002379554, but the actual statement

4 has a different few numbers that start. Probably just a typo,

11:46 5 don't you think?

6 A. I know there's bottom numbers on those checks. I always

7 called that account, I think, 00.

8 Q. All right. Now, going back to this Exhibit 25 --

9 A. Uh-huh.

11:47 10 Q. And I regret that I can't get this clearer; but it shows on

11 April 13th, a deposit of an IRS tax refund of \$4,143.72,

12 correct?

13 A. Yes, sir.

14 Q. And that deposit was April 13th?

11:47 15 A. Yes, sir.

16 Q. Just four days after your amended return was filed,

17 correct?

18 A. Yes, sir.

19 Q. Your amended return was April 9th?

11:47 20 A. Yes, April 9th.

21 Q. But nothing was mentioned on that return?

22 A. No. I know I called my -- I called Claude when I got it.

23 And by Claude, I meant Mr. Lightfoot. I'm sorry.

24 Q. You discussed that with Mr. Lightfoot?

7 25 A. I did.

1 Q. Did he tell you not to put it on the return?
2 A. No, no. I discussed that I received the refund, what
3 should I do with it.
4 Q. What did Mr. Lightfoot tell you?
11:48 5 A. Said, "If the trustee didn't put a lien on it, put it in
6 your account; but they may -- they may ask for it back."
7 Q. But, Judge Porteous, that schedule was signed under penalty
8 of perjury.
9 A. It was omitted. I don't know how it got omitted. There
11:48 10 was no intentional act to try and defraud somebody. It just
11 got omitted. I don't know why.
12 We had been fighting this, trying not to go into
13 bankruptcy for a long time. And I don't know. It just didn't
14 appear on the schedule.
11:48 15 Q. Okay.
16 JUDGE BENAVIDES: How many days before the schedule
17 was made that omitted that was the request for refund made of
18 the filing?
19 MR. FINDER: About five days, five days from the
11:49 20 original petition, your Honor. The schedule was on the amended
21 petition and --
22 JUDGE BENAVIDES: Well, I'm trying to get the
23 difference in date between the date he signs the statement
24 saying he has no refund coming --
9 25 MR. FINDER: Right.

9 1 JUDGE BENAVIDES: -- and the date that he asked for a
2 refund from -- on his tax return.

3 MR. FINDER: Right. The original petition was
4 filed -- it was about five days before the original petition.

11:49 5 JUDGE BENAVIDES: All right.

6 MR. FINDER: Right. And the schedule was April 9th,
7 but -- and it was listed -- it was not listed on it. It was
8 listed as "none."

9 BY MR. FINDER:

11:49 10 Q. Okay. Judge Porteous, let's go back to Schedule B,
11 Question 2 --
12 A. All right.

13 Q. -- where it says, "checking, savings or other financial
14 accounts."

11:50 15 A. Right.

16 Q. And you listed a hundred dollars?

17 A. Right.

18 Q. Can you see -- okay. And again, this was in April, right?

19 A. Yeah.

11:50 20 Q. Okay. April 9th?

21 A. Yes, sir.

22 Q. And we have -- do you recall, Judge Porteous, owning a
23 Fidelity money market account, Account Number 8-00-114933-7?

24 A. Right.

10 25 Q. Okay. Let me show you, Judge Porteous, Exhibit 28.

1 A. All right.

2 Q. Which is your Fidelity money market account, correct?

3 A. Yes, sir.

4 Q. And this is for you and your wife, correct?

11:51 5 A. Right.

6 Q. The account number I just read, correct?

7 A. Right.

8 Q. Statement period March 21, 2000, through April 20th,

9 2000 -- I'm sorry, 2001 through April 20th, 2001, correct?

11:51 10 A. Right.

11 Q. And you see on March 28th, Check Number 581 for \$283.42,

12 your balance, right? That was your balance in that account?

13 A. That's what it says, that's correct.

14 Q. Okay. Yet, on your bankruptcy schedule, you put that the

11:51 15 account -- this was the day before bankruptcy; and on your

16 bankruptcy schedule you put you only had a hundred dollars in

17 the account, correct?

18 A. It appears this is the Fidelity account.

19 Q. Right.

11:51 20 A. And since it's not listed, for some reason it didn't

21 appear, apparently, on my bankruptcy, because only Bank One

22 appeared, it looks like.

23 Q. Okay.

24 A. Although, I thought I told Claude about all the -- I only

52 25 had two.

1 Q. Well, your attorney told you to get all your records --
2 A. Right.
3 Q. -- and make --
4 A. I could have sworn --
11:52 5 Q. Correct.
6 A. I honestly believed we told Claudé about Fidelity. There
7 was really no reason not to tell him about Fidelity. The
8 account at any given time which would have had the most money
9 would have been the Bank One account because my checks were
11:52 10 deposited in there.
11 JUDGE LAKE: Mr. Finder, I'm not clear. Are we
12 talking about the difference in the Bank One disclosure and --
13 MR. FINDER: No. It wasn't listed, Judge, and was an
14 account -- there was more money than was listed on the
11:52 15 schedule.
16 JUDGE LAKE: You're saying the account was not
17 disclosed at all?
18 MR. FINDER: I don't believe it was.
19 CHIEF JUDGE JONES: Fidelity or Bank One?
11:52 20 MR. FINDER: Bank One was -- Bank One was disclosed.
21 CHIEF JUDGE JONES: For too small an amount?
22 MR. FINDER: Right.
23 CHIEF JUDGE JONES: Fidelity was not disclosed?
24 MR. FINDER: Correct.
3 25 JUDGE LAKE: And where in the charge is Fidelity

1 referred to? That's the question.

2 MR. FINDER: I believe it was in -- on Page 12. It's

3 not -- the name of the institution isn't in there, but

4 that's --

11:53 5 JUDGE BENAVIDES: How much was in Fidelity at the time

6 of the filing?

7 MR. FINDER: The balance on the day before bankruptcy

8 was \$283.42.

9 JUDGE LAKE: So, that's the last bullet point on Page

11:53 10 12, is the Fidelity account?

11 MR. FINDER: Yes, sir.

12 JUDGE BENAVIDES: And, then, the one that was

13 listed --

14 MR. FINDER: The Bank One for a hundred, I believe

11:53 15 we'll have more evidence later on that.

16 JUDGE BENAVIDES: Okay. That's not here yet.

17 THE COURT REPORTER: I'm sorry, Judge?

18 JUDGE BENAVIDES: That's not presently before us. I

19 think Mr. Finder is saying he's getting to that later.

11:53 20 MR. FINDER: Actually, in the charge, we had a balance

21 of 280 and the actual amount was \$283.42; so, there was a \$3.42

22 variance.

23 BY MR. FINDER:

24 Q. Now, Judge Porteous, we already discussed, from Exhibit 1,

4 25 Bates Page 112, the statement of financial affairs and the

1 jurat that had to be -- it was being signed under penalty of
2 perjury. Do you remember that?

3 A. Right.

4 Q. Okay. And on this page it says, "Payments to creditors.
11:54 5 List all payments on loans, installment purchases of goods or
6 services, and other debts aggregating more than \$600 to any
7 creditor made within 90 days immediately preceding the
8 commencement of this case."

9 And then in parenthesis, "Married debtors filing
11:55 10 under Chapter 12 or Chapter 13 must include payments by
11 either/or both spouses whether or not a joint petition is
12 filed, unless the spouses are separated and a joint petition is
13 not filed."

14 Did I read that accurately?

11:55 15 A. You did.

16 Q. And where it requests the name and address of the
17 creditors, it just says "Normal Installments," correct?

18 A. Yes, sir.

19 Q. Let's go back to our Fleet Credit Card, Exhibit 29.

11:55 20 And, again, here is a -- sorry. I had the wrong
21 page. Give me a moment. Here it is.

22 This is the account number we discussed before,
23 correct, from the Fleet Credit Card for Mrs. Porteous?

24 A. Yes, sir.

36 25 Q. The balance of \$1,088.41, correct?

1 A. That's what it says, yes, sir.

2 Q. That's what it says.

3 And the date of this statement -- under the
4 account number, it has payment due date April 15th, 2001, with
11:56 5 a new balance of 1088.41, correct?

6 A. Yes, sir.

7 Q. Now, the next statement, for the end of March and April,
8 shows past due amount zero because of the previous balance a
9 thousand -- there was a previous balance of 1,088.41. Do you
11:57 10 see that?

11 A. All right. Yes, sir.

12 Q. And then there was a payment recorded by the credit card
13 company on March 29th, 2001?

14 A. All right.

11:57 15 Q. Of 1,088.41?

16 A. Right.

17 MR. FINDER: Your Honor, this is what you were getting
18 at a little earlier.

19 BY MR. FINDER:

11:57 20 Q. Plus charges -- new charges for GameCash. Is that a
21 casino?

22 A. Is what? I'm sorry.

23 Q. GameCash?

24 A. I'm sure it is.

7 25 Q. Biloxi, Mississippi?

11:57 1 A. Sounds like it.

2 Q. And Beau Rivage Hotel in Biloxi, that's a casino, isn't it?

3 A. It is.

4 Q. For \$215.99 and \$231, respectively, correct?

11:57 5 A. Yes, sir, that's what it reflects.

6 Q. So, that was not listed on your schedule, was it, that

7 payment?

8 A. No, sir.

9 JUDGE LAKE: Which payment?

11:58 10 MR. FINDER: The Fleet.

11 JUDGE LAKE: Where --

12 MR. FINDER: I'm sorry?

13 JUDGE LAKE: Where are you referring when you say,

14 "That payment was not listed on your schedule"?

11:58 15 MR. FINDER: On page --

16 JUDGE LAKE: Are you referring to the 1,088 payment?

17 MR. FINDER: That's correct.

18 JUDGE LAKE: What about the subsequent payments?

19 MR. FINDER: Well, the 1,088, which was paid right

11:58 20 before the bankruptcy was filed -- at the time of the

21 bankruptcy filing, was not listed even though the schedule

22 called for all such payments prior to the filing of bankruptcy.

23 And this is the payment that --

24 CHIEF JUDGE JONES: Well, then new charges were

38 25 incurred at the casino?

11:58 1 MR. FINDER: Among other places.
2 CHIEF JUDGE JONES: After -- yes, after.
3 Mr. Finder, we're going to take a break around
4 noon; so, you have about five minutes.
11:58 5 MR. FINDER: Okay. Thank you.
6 BY MR. FINDER:
7 Q. Judge Porteous, do you recall obtaining two 1,000-dollar
8 markers -- we may have -- we touched on this earlier --
9 2,000 -- two 1,000-dollar markers from Grand Casino Gulfport on
11:59 10 or about February 27th, 2001, which were deposited against your
11 bank account on April 4th, one week after the filing of your
12 Chapter 13 petition?
13 A. Do you have an independent recollection of that?
14 A. No, I do not have an independent recollection.
11:59 15 Q. Or five days before the amended voluntary petition?
16 A. I do not have an independent recollection of that.
17 Q. All right.
18 MR. FINDER: Judges, this may be a good place to stop
19 before I go on to the next area, as long as we're going to
11:59 20 break for lunch.
21 CHIEF JUDGE JONES: Okay. We'll take about an hour.
22 THE WITNESS: 1:00 o'clock, your Honor?
23 CHIEF JUDGE JONES: Yes, sir.
24 THE WITNESS: Judge, just for my own information, what
11:59 25 time will we be going till today? I'm not --

1 CHIEF JUDGE JONES: We think until around 5:00.
 2 THE WITNESS: Okay. I just was asking. That's all.
 3 CHIEF JUDGE JONES: Yes.
 4 THE WITNESS: Thank you.
 5 CHIEF JUDGE JONES: All right. Thank you.
 6 We'll be in recess.
 7 (Recess taken from 12:00 p.m. to 1:05 p.m.)
 8 CHIEF JUDGE JONES: Be seated, please. We're ready to
 9 resume.
 10 MR. FINDER: Your Honors, I would like to clarify a
 11 couple questions you had asked me at the bench.
 12 BY MR. FINDER:
 13 Q. Judge Porteous, let me call your attention again to
 14 Schedule B.
 15 JUDGE LAKE: I can't hear you.
 16 MR. FINDER: Oh, I'm sorry.
 17 JUDGE LAKE: Just pretend there is a whole platoon out
 18 here awaiting your instructions.
 19 JUDGE BENAVIDES: You may proceed. She has indicated
 20 she'll be right back.
 21 MR. FINDER: Oh, okay. Okay. Your Honors had asked
 22 me a question regarding one of the matters about the Bank One
 23 bank account, the hundred dollars. I don't recall which one of
 24 you asked me, but it was in regard to Number 22 in the charge
 25 on Page 12; and I wanted to clarify that.

01:05 1 BY MR. FINDER:
2 Q. Judge Porteous, let me call your attention again, please,
3 to Schedule B --
4 A. Okay.
01:05 5 Q. -- Number 2, the check where you were asked to list your
6 checking accounts.
7 JUDGE BENAVIDES: I'm sorry, counsel. I can't hear
8 you.
9 MR. FINDER: I'm sorry, Judge.
11:59 10 BY MR. FINDER:
11 Q. Call your attention to Schedule B, where you're asked --
12 Number 2, where you're asked to list your checking accounts and
13 I believe you put Bank One and a checking account number for
14 \$100. I believe we established that the account number had a
01:06 15 typographical error and was close but not exact.
16 Do you recall that?
17 A. All I think that meant was that the -- at the bottom of the
18 check, the banks use additional numbers. I think it was 690
19 would have been left out is all.
01:06 20 Q. That's fine. You're correct.
21 I'm going to show you now from Exhibit 27, which
22 we've already referenced but I -- there's a line on here I had
23 not referenced. This is from your Bank One statement. You can
24 see your name on there with the actual account number; and the
6 25 date of the statement is March 23rd to April 23rd, 2001.

06 1 It says, "Summary of Account Balance." The
2 balance as of April 23rd, which is the last day of the
3 statement period, was \$5,493.91. April 23rd being five days
4 before the amended petition was filed, correct?

01:07 5 A. Correct.
6 Q. Moving up a little bit, I believe it says --
7 A. Wait. I'm sorry. You said April 23rd being five days
8 before the amended petition was filed?
9 Q. I'm sorry. I'm wrong. It was after the amended petition
01:07 10 was filed. Forgive me.
11 Beginning balance, five fifty-nine oh seven;
12 ending balance 5493.91, correct?

13 A. Yes, sir.

14 MR. FINDER: Your Honors asked me to -- a question
01:07 15 about Number 23 in the charge, appearing on Pages 13 and 14,
16 having to do with who paid the Fleet Credit Card.
17 BY MR. FINDER:
18 Q. Judge Porteous, I'm going to show you Exhibit 29. And,
19 again, to refresh your recollection, this is the account number
01:08 20 to your Fleet Credit Card with a balance of \$1,088.41 on a
21 statement that is for the month of March.
22 You can see the account transactions, March 5th
23 through March 19th, correct?
24 A. Yes, sir.
18 25 Q. And the end -- and the new balance as of the -- this

1 statement is \$1,088.41. Did I --
2 A. Yes.
3 Q. -- state that correctly?
4 Okay. That's Page 618.
01:08 5 A. All right.
6 Q. Page 620, another Fleet Credit Card statement for the same
7 account shows the payment of \$1088.41, which Fleet recorded on
8 March 29th, correct?
9 A. Yes, sir.
01:09 10 Q. And that's one day after you filed the voluntary petition,
11 the first -- the original petition, correct?
12 A. The date they recorded it, yes.
13 Q. All right. Now showing you from Bates Number 619 --
14 MR. FINDER: What's the exhibit number for this?
01:09 15 MR. WOODS: Twenty-nine, I believe.
16 MR. FINDER: Exhibit --
17 MR. WOODS: Twenty-nine.
18 MR. FINDER: -- 29. Right, 29.
19 BY MR. FINDER:
01:09 20 Q. Check Number 1660 on the account of Rhonda F. Danos, dated
21 3-23-01, right -- five days before bankruptcy?
22 A. All right.
23 Q. Payable to Fleet in the same amount, \$1088.41, correct?
24 A. Yes, sir.
0 25 Q. And here in the highlighted portion for the memo, where it

10 1 says "For," "Carmella Porteous." And it has the Fleet bank
2 account number, correct?
3 A. Yes.
4 Q. So, it appears that Ms. Danos paid off Fleet, correct?
01:10 5 A. Well, her check did, yes.
6 Q. Her check did.
7 Which would have preferred Fleet as -- which was
8 paid off right before bankruptcy, as opposed to the other --
9 other creditors, correct?
01:10 10 A. I presuppose [sic] so. I'm not --
11 Q. Now, why was it, sir, that Rhonda Danos happened to pay off
12 your wife's credit card days before you filed bankruptcy?
13 A. I have no idea. I'm sorry.
14 MR. FINDER: Did your Honors have any more questions
01:10 15 about --
16 A. What date was that? I'm sorry, counselor.
17 BY MR. FINDER:
18 Q. The date of --
19 A. I have no idea.
01:11 20 Q. Judge Porteous, was Rhonda Danos in the habit of paying off
21 your wife's bills?
22 A. No, not that I'm aware of. I mean, she's paid some bills
23 for me, though.
24 Q. But you're not aware of her paying your wife's bills?
1 25 A. No. She didn't pay my wife's bill. A check paid it.

1 Q. Well, the check is made payable to your wife's creditor,
2 Fleet.
3 A. Right, a check paid it.
4 JUDGE BENAVIDES: Can I see that check again?
01:11 5 MR. FINDER: Yes, your Honor.
6 JUDGE BENAVIDES: All right.
7 MR. FINDER: Can you see?
8 BY MR. FINDER:
9 Q. Judge Porteous, did you ask Rhonda Danos to write that
01:11 10 check for payment of the Fleet account?
11 A. I have no recollection of asking her to do that.
12 Q. All right. Judge Porteous, on April 9th, 2001, when you
13 signed the statement of financial affairs in your bankruptcy
14 under penalty of perjury, which was on Exhibit 1, Bates
01:12 15 Number 116, Item 8 talks about losses.
16 Do you -- do you recall that independently, sir,
17 or do you have it in front of you?
18 A. I do not have that in front of me.
19 Q. All right. Can you read that?
01:12 20 A. Yes, sir.
21 Q. Okay. It asks you to list all losses for fire, theft,
22 other casualty, gambling within one year immediately preceding
23 the commencement of this case -- meaning your case -- or since
24 the commencement of this case. And I believe we read this
13 25 before, about married debtors filing under Chapter 12 and

1 Chapter 13.

2 And you list "none," correct?

3 A. That's what's listed, correct.

4 Q. Judge Porteous, do you recall that in the -- that your

01:13 5 gambling losses exceeded \$12,700 during the preceding year?

6 A. I was not aware of it at the time, but now I see your

7 documentation and that -- and that's what it reflects.

8 Q. So, you -- you don't dispute that?

9 A. I don't dispute that.

01:13 10 Q. Therefore, the answer "no" was incorrect, correct?

11 A. Apparently, yes.

12 Q. Even though this was signed under oath, under penalty of

13 perjury, correct?

14 A. Right.

01:13 15 The casino, you don't get a gratuitous statement

16 every year from them. I mean, you would have to get it from

17 them.

18 Q. You would have to ask for it?

19 A. Yes.

01:13 20 JUDGE LAKE: I couldn't hear. What you did you say?

21 THE WITNESS: You have to ask -- they don't send a

22 statement or anything, Judge. If you want to know your status,

23 you can go ask them; but they don't routinely send -- in fact,

24 they never send it out.

14 25 JUDGE LAKE: Okay. But they -- if you call them, they

1 will tell you?

2 THE WITNESS: What's that? I'm sorry.

3 JUDGE LAKE: If you call them, then they will tell

4 you?

01:14 5 THE WITNESS: Yes, sir. I assume they would.

6 JUDGE LAKE: Okay. Thank you.

7 JUDGE BENAVIDES: How much was owing?

8 MR. FINDER: Sir? I'm sorry.

9 JUDGE PORTEOUS: Gambling losses.

01:14 10 JUDGE BENAVIDES: How much was the amount owing?

11 JUDGE LAKE: He said 12,700 the previous year.

12 MR. FINDER: Twelve thousand seven hundred.

13 And we'll -- through our summary witness, we'll

14 get into more detail about gross versus net; but for the

01:14 15 present purpose, that's -- that's the information.

16 BY MR. FINDER:

17 Q. Judge Porteous, we've talked about your bankruptcy lawyer,

18 Claude Lightfoot, right?

19 A. Yes, sir.

01:15 20 Q. And we also mentioned earlier in our examination the fact

21 that Regions Bank, where you had done some business, was listed

22 as an unsecured creditor in the original voluntary petition,

23 correct?

24 A. Right.

5 25 Q. Is it a fact, sir, that Circuit Judge W. Eugene Davis made

1 a finding of crime fraud as to attorney-client privilege as to
2 discussions between you -- discussions and documents between
3 you and Mr. Lightfoot regarding the Regions Bank?
4 A. That's my understanding, correct.

01:15 5 Q. Let me show you what's been marked as Exhibit 12, an order,
6 which at the time it was under seal, the order of crime fraud.
7 Have you seen this order before?
8 A. I believe so.

9 Q. Okay. And the actual order for crime fraud was signed by
01:16 10 Judge Davis on October 19th, 2004. Is that correct?
11 A. That -- if that's what it says, of course.
12 Q. October 19th, 2004?
13 A. That's what it says.

14 Q. Okay. Therefore -- I wanted to establish that before I ask
01:16 15 you questions --
16 A. I understand.

17 Q. -- about this transaction.
18 You and Mr. Lightfoot agreed, at least by
19 December 21st, 2000 --

01:16 20 MR. FINDER: I'm sorry. Can you hear me?
21 BY MR. FINDER:
22 Q. -- by December 21st, 2000, to send out workout letters to
23 your various unsecured creditors, correct?
24 A. We talked about that, that's correct.

25 Q. And the decision was made between you and Mr. Lightfoot to

1 exclude Regions Bank, which was an unsecured creditor in the
2 amount of \$5,000 plus finance charges, from the list of
3 unsecured creditors that received the workout letter, correct?
4 A. That's correct.

01:17 5 Q. Showing you, sir, what's been marked as Exhibit 5, on the
6 stationery of Claude Lightfoot to you" and Mrs. Porteous, dated
7 December 21st, 2000, "Regarding workout proposal."
8 "Dear Judge and Mrs. Porteous, I enclose a copy
9 of the letters and one copy of the attachments. I included
01:17 10 with each that have sent -- that I have sent to all the
11 unsecured creditors with the exception of Regions Bank, which
12 we wanted to exclude."

13 "Did I read that accurately?
14 A. You did.

01:17 15 Q. Signed by Mr. Lightfoot, correct?
16 A. Right.
17 Q. On -- on a copy. This is Bates Number 296.
18 297, Bates Number 297, is a sample letter that
19 went to Bank of Louisiana MasterCard. Are you familiar with
01:18 20 that?
21 A. I've seen -- I don't know if I'm familiar with that
22 exactly, but I think they all said the same thing.
23 Q. Now, we've talked about the Fleet Credit Card, also; and
24 here are the lists of credit -- unsecured creditors that were
6 25 listed in Mr. Lightfoot's letter.

1 Fleet is not on here, is it?

2 A. It is not.

3 Q. Okay. But of those that are listed, the 13, Mr. Lightfoot

4 totals them up to a sum of \$182,330.23 in credit card debt,

5 correct?

6 A. Right.

7 Q. Mr. Lightfoot goes on in his letter to tell these unsecured

8 creditors they should accept the workout proposal and there

9 would be a -- the universe of cash available to pay them out is

10 \$39,398.90, which represents about 21 percent of the balances,

11 correct?

12 A. That's what it says, correct.

13 Q. Right.

14 Also, it says Regions Bank was being excluded.

15 And, in fact, Regions Bank is not listed anywhere in the

16 letter, is it?

17 A. That's right.

18 Q. The loan with Regions Bank -- and I'll show you Exhibit 4.

19 A. All right.

20 Q. The loan with Regions Bank, the original loan --

21 A. Yes, sir.

22 Q. -- was for \$5,000 plus a finance charge of \$30; and it was

23 taken out on January 27, 2000, correct?

24 Boy, it's hard to read.

25 A. You're right.

1 Oh, yeah, that's better.

2 Yes, sir, it says --

3 MR. FINDER: Can you all see?

4 BY MR. FINDER:

01:20 5 Q. And this Account 436-64-1366 represents the account for
6 that loan, right?

7 A. Yes, sir.

8 Q. And you are the borrower?

9 A. That's correct.

01:20 10 Q. You are the borrower, and the lender is Regions Bank. Have
11 I read that correctly?

12 A. Yes, sir.

13 Q. All right. And this is on Bates Number 272.

14 A. All right.

01:20 15 Q. In fact, sir, you signed the note, correct?

16 A. Yes, sir.

17 Q. That's your signature, right?

18 A. Yes, sir.

19 Q. And that's on Page 273.

01:20 20 On the workup papers for this loan, it says
21 the -- again, same account number, same principal, loan date,
22 etcetera, which matures July 24th, 2000.

23 A. All right.

24 Q. Primary purpose of the loan is a personal loan, correct?

25 A. Uh-huh.

1 Q. Stated purpose, "Tuition for son," correct?
2 A. Uh-huh.
3 Q. Now, who was the son for whom you were asking for tuition?
4 A. Timmy or Tommy, I would think.
01:21 5 THE REPORTER: I'm sorry?
6 JUDGE PORTEOUS: Timothy or Tommy.
7 BY MR. FINDER:
8 Q. But you're not sure sitting here today?
9 A. Sitting here today, I don't know.
01:21 10 Q. Okay. There was a statement in the middle of the workout
11 paper -- I'm sorry -- the loan application paper, "Financial
12 Condition."
13 " I'll read it. "By signing this authorization, I
14 represent and warrant to lender that the information provided
01:21 15 above is true and correct and that there has been no federal
16 material adverse change in my financial condition as disclosed
17 in my most recent financial statement to lender."
18 This authorization is dated June -- January 27,
19 2000, signed by you, correct?
01:22 20 A. Yes, sir.
21 Q. And that's on Page 274 --
22 A. Yes, sir.
23 Q. -- right?
24 CHIEF JUDGE JONES: Is that 2000 or 2001?
2 25 MR. FINDER: 2000.

1 THE WITNESS: 2000.

2 MR. FINDER: I'm building up to it.

3 CHIEF JUDGE JONES: I see.

4 BY MR. FINDER:

01:22 5 Q. On this other loan -- page to the loan application, dated
6 January 24th, it says -- and this is a little hard to read, but
7 follow with me -- "In the last ten years, have you been
8 bankrupt or are you in the process of filing bankruptcy?" And
9 it's checked off, "No."

01:22 10 A. Right.

11 Q. And that's accurate, correct?

12 A. I believe so.

13 Q. That was Page 276.

14 A. Yes, sir.

01:22 15 Q. Now, this loan got extended a couple of times, right?

16 A. I don't recall, but was that a 60 -- a six --

17 Q. Six months.

18 A. Six months. Had to have gotten renewed at least once.

19 Q. Okay. Well, let's talk about the renewal.

01:23 20 Here's the loan date, 7-24. It's the same amount
21 plus another \$30 for the loan fee?

22 A. Right.

23 Q. So, it's the same loan because -- I believe it's the same
24 account number.

25 A. It is.

1 Q. All right. To you from Regions Bank. Everything else is
2 pretty much the same on this page, correct?
3 A. Right.
4 Q. And that page being 279?
5 A. Yes, sir.
6 MR. FINDER: I'm sorry, Judges. It's 279.
7 BY MR. FINDER:
8 Q. This loan is also signed by you, correct?
9 A. Yes, sir.
10 Q. And on the loan request it says, "Renewal of existing,"
11 right?
12 A. Yes, sir.
13 Q. And the loan officer -- or the branch -- who happens to be
14 the branch manager, I believe, Loretta Young, correct?
15 A. Yes, sir.
16 Q. As part of this loan package, you filled out the
17 information page, for, again, personal loan?
18 A. Right.
19 Q. "Specific Purpose," now it says, "Refinance existing." So
20 that's still for your son's tuition, correct?
21 A. Yes, sir.
22 Q. And the financial condition, you have still signed it?
23 A. Yes, sir.
24 Q. And this is July 24th, 2000?
25 A. Right.

1 Q. Let's jump ahead.
2 That was the first extension?
3 A. Yes, sir.
4 Q. Showing you now Bates 288, the second extension.
01:24 5 A. Yes.
6 Q. This loan is dated January 17th, 2001, correct?
7 A. Yes, sir.
8 Q. Matures July 17th, 2001?
9 A. Yes, sir.
01:25 10 Q. Now, January 17th, 2001, was a couple months before
11 bankruptcy, correct?
12 A. Ultimately, yes.
13 Q. Yes.
14 And, again, the rest of the terms are very
01:25 15 similar to the original and first extension, right?
16 A. Yes, sir, it appears to be.
17 Q. Okay. However, on January 17th, you had already engaged
18 Mr. Lightfoot to be your bankruptcy attorney, correct, because
19 we just saw the letters that went out for December?
01:25 20 A. I retained him to try and work out my debt and, if it
21 couldn't be worked out, to maybe consider bankruptcy.
22 Q. Right.
23 A. Correct.
24 Q. And on this loan, the second extension, you signed it?
5 25 A. Yes.

1 Q. And on the workup sheet to process the loan, again, by
2 Loretta Young?
3 A. Right.
4 Q. Your name?
5 A. Right.
6 Q. Same account number but here it says, "In the last -- In
7 the last ten years, have you been bankrupt or are you in the
8 process of filing bankruptcy?" And now it's checked "No"?
9 A. Right.
10 Q. In fact, by this time you had already -- as you just
11 stated, you had already talked to Mr. Lightfoot about trying to
12 work it out or going bankrupt, correct?
13 A. That's correct.
14 Q. So, that's a false statement, is it not?
15 A. I didn't mean it to be false, because I wasn't in the
16 process of declaring -- I was doing everything I could not to
17 file a bankruptcy. That's why I attempted for so long to do a
18 workout.
19 Q. But this is dated in January?
20 A. Right. We had not filed the bankruptcy.
21 Q. You hadn't filed yet.
22 A. I think the letters may have just gone out previous to
23 that.
24 Q. Okay. Let's look at the next page, Page 291 -- sorry.
25 The page we just referenced was Page 290?

1 A. Right.

2 Q. Let's move to the next page..

3 "Financial condition, by signing this

4 authorization, I represent and warrant to lender that the

01:27 5 information provided above is true and correct and there has

6 been no material adverse change in my "financial condition."

7 Now, there had been a material adverse change in

8 your financial condition, hadn't there, since the last time you

9 received the loan from the bank?

01:27 10 A. I probably stood at the same amount of debt that I had when

11 I got the loan, but was I now in the process of trying to work

12 out a settle -- a payoff, yes.

13 Q. I'm sorry, sir. Maybe it's the way I asked the question.

14 Let me try it again.

01:27 15 Since your last -- since the last time you took

16 an extension on this loan, your financial condition had stayed

17 the same or deteriorated; it hadn't gotten any better, had it?

18 A. Hadn't gotten any better, that's correct. --

19 Q. So, if you were in the banker's shoes, you would have no

01:27 20 reason to know that you were contemplating bankruptcy or

21 contacting bankruptcy counsel, because you have checked off on

22 this sheet that there's been no material change, correct?

23 A. I would have to object to that question. You're asking me

24 to presuppose my --

01:27 25 Q. You're right and -- you're correct, and I withdraw the

1 question.
2 A. Thank you.
3 Q. That is Page 291.
4 A. Right.
01:28 5 Q. Well, we know that Regions Bank eventually was given notice
6 of the bankruptcy, as were all --
7 A. They were.
8 Q. -- the other unsecured creditors, correct?
9 A. They were.
01:28 10 Q. But by then, Regions Bank had already given you a loan and
11 two extensions, correct?
12 A. Yes, sir.
13 Q. And when your bankruptcy --
14 MR. FINDER: I'm referring to Exhibit 1, Bates
01:28 15 Number 27.
16 BY MR. FINDER:
17 Q. When the trustee filed its final report in your bankruptcy,
18 where it says this case is completed, final meeting of
19 creditors, et cetera, it lists Regions Bank, does it not,
01:29 20 Number 23?
21 A. Yes, sir.
22 Q. And Regions Bank is getting a percentage of its outstanding
23 debt as an unsecured creditor at 34.55 percent, correct?
24 A. Right.
1:9 25 Q. Which means Regions Bank only got \$1,782.43 in this

.9 1 bankruptcy, correct?

2 A. That's -- that's exactly what those documents show.

3 Q. But, again, when you applied for the last extension,

4 Regions Bank had no idea that you were -- that you were

01:29 5 discussing your financial condition with bankruptcy counsel,

6 correct?

7 A. They did not.

8 Q. Regions Bank didn't ask you for any kind of collateral to

9 collateralize the loan or move itself up from an unsecured

01:29 10 creditor to a higher level, did it?

11 A. No. Mr. Butler was a friend. No, they didn't.

12 Q. Mr. Butler, for the record, is Ed Buddy Butler, correct?

13 A. Yes.

14 Q. And you didn't tell him Mr. -- even though he was a friend,

01:29 15 you didn't tell him that you were having financial problems,

16 did you?

17 A. No, I did not.

18 Q. In fact, you and Mr. Butler even go to the same church,

19 right?

01:30 20 A. I can't say we haven't been to a church together. I don't

21 know that we go to the same church. It's possible.

22 Q. Okay.

23 A. I may have seen Buddy.

24 Q. Moving on, back to the workout letters that Mr. Lightfoot

10 25 sent out -- and, again, we're talking about Exhibit 5.

1 A. Uh-huh.

2 Q. With the exception of Regions Bank?

3 A. Right.

4 JUDGE LAKE: What exhibit are you looking at now?

01:30 5 MR. FINDER: Exhibit 5.

6 JUDGE LAKE: Okay.

7 MR. FINDER: I am going to work backwards. We just

8 talked about 5, and we're on it again.

9 JUDGE LAKE: All right.

01:31 10 A. Is that Exhibit 5, counselor?

11 BY MR. FINDER:

12 Q. Yes, sir.

13 A. Or your Bates Number 5?

14 Q. No. Exhibit 5, Bates Number 296.

01:31 15 A. Okay. I just -- I saw an "SC" up at the top.

16 Q. And I think we may have discussed this briefly; but

17 Mr. Lightfoot listed approximately a hundred eighty -- a little

18 over \$182,000 in unsecured credit card --

19 A. Right. Right.

01:31 20 Q. Right?

21 When bankruptcy was filed and then your amended

22 bankruptcy, you have Schedule F --

23 A. Right.

24 Q. -- from Exhibit 1, Bates Number 102; and here Mr. Lightfoot

11 25 actually lists every single credit card that you've told him

1 about, right?

2 A. Yes, sir.

3 Q. Because he can't list credit cards that he doesn't know

4 about, he relies on you and/or Mrs. Porteous to give him the

01:32 5 financial picture so he can make a true and correct listing on

6 here?

7 A. That's correct.

8 Q. Of course, Fleet, as we determined earlier, is not on it?

9 A. It's not on it.

01:32 10 Q. Okay. I believe -- and just by manual counting, there are

11 now 15 credit cards. And I -- you can take my word for it or

12 I'll hand you the exhibit and you can count them up.

13 A. I have no reason to doubt your representation.

14 Q. And now -- and now Regions Bank --

01:32 15 A. Right.

16 Q. -- is also listed, for \$5,000, correct?

17 A. Yes, sir.

18 Q. More importantly, the amount of unsecured debt has gone up

19 to 196,000, correct?

01:32 20 A. Yes, sir, that's what it says.

21 Q. That's from the workout letter, where it was less?

22 A. Whatever it was, yeah.

23 Q. You were a federal judge at this time, of course?

24 A. Right.

32 25 Q. And you filed a financial disclosure report for calendar

1 year 2000 and -- on May 10th, '01, correct?
 2 A. Right.
 3 Q. I'm referring to Exhibit 3, Bates Number 20 -- I'm sorry,
 4 2 --
 5 A. 00239.
 6 Q. 239.
 7 And this is your disclosure, is it not, sir?
 8 A. Appears to be, of course.
 9 Q. Well --
 10 A. It is. I mean, it says it's me.
 11 Q. Let's look at the last page, Bates Number 242.
 12 A. That's me.
 13 Q. That's your signature, right?
 14 A. (Nodding head).
 15 Q. Okay. Now, here, under Section VI -- Roman Numeral VI, I
 16 believe, "Liabilities" --
 17 A. Yes, sir.
 18 Q. -- you list but two credit cards: MBNA credit card, Value
 19 Code J; and Citibank credit card, Value Code J?
 20 A. Right.
 21 Q. And the legend on the bottom that has "Value Code" says,
 22 "J, \$15,000 or less," correct?
 23 A. Right.
 24 Q. So, according to your financial disclosure, your
 25 liabilities did not exceed \$30,000, correct?

01:34 1 A. According to the disclosure.
2 Q. Okay. Now, according to the disclosure, you have to
3 certify these. Isn't that right, Judge?
4 A. Right. Right.
01:34 5 Q. And I believe it says, "I certify that all information
6 given above, including information pertaining to my spouse and
7 minor dependent children, if any, is accurate, true, and
8 complete to the best of my knowledge and belief, and that any
9 information not reported was withheld because it met applicable
01:34 10 statutory provisions permitting nondisclosure," with your
11 signature and signed on the 10th of May, 2001, correct?
12 A. Yes, sir.
13 Q. It also says that, "Any individual who knowingly and
14 willfully falsifies or fails to file this report may be subject
01:35 15 to civil and criminal sanctions," citing -- citing 5 United
16 States Code Appendix, Section 104, which I believe we covered
17 earlier this morning, correct?
18 A. I believe we did.
19 Q. All right. Well, Judge Porteous, you listed, as I said,
01:35 20 two credit cards, which you have admitted to, MBNA and Citi?
21 A. Right.
22 Q. In fact, if we go back to Schedule F of Exhibit 1, starting
23 on Bates Number 102, you have not just a Citibank account; but
24 you have -- one, two -- three Citibank accounts, right?
5 25 A. There are three accounts. I don't know if they were in my

1 name or my wife's; but, yeah, there were three Citi. That's
2 what listed.

3 Q. Right. But, again, you filed jointly?

4 A. Yeah. But I'm just saying I -- there are three accounts
01:35 5 listed. You're correct.

6 Q. The first one under Number 4 -- the next one under 4, is
7 \$23,987 and change, correct?

8 A. I can't see it because your arm is there.

9 Q. I'm sorry.

01:36 10 A. But, again, whatever is reflected is reflected.

11 Q. The second one to Citi is \$20,719.58?

12 A. Right.

13 Q. The third one is -- the third Citi account --

14 A. Right.

01:36 15 Q. -- 17,711.35.

16 These are both on Pages 102 and 103 of the
17 exhibit, that being Exhibit 1.

18 Similarly, going back, you say -- you list an
19 MENA credit card, again, just like Citi, \$15,000 or less debt.

01:36 20 Now, the debts for all of the three Citi accounts
21 exceeded 15,000, didn't they?

22 A. Yes, sir.

23 Q. MENA does have one less than 15,000. It has one for
24 \$3,212.80, right?

25 A. Yes.

7 1 Q. But it also has a second one at \$30,931.02, correct?
2 A. Yes, sir.
3 Q. Therefore, Judge Porteous, your certification of the -- of
4 your liabilities that you signed on April 10th --
01:37 5 A. May 10th.
6 Q. I'm sorry. May 10th. Forgive me.
7 -- was false, correct?
8 A. It was not correct. It was not accurate, correct.
9 JUDGE BENAVIDES: Which of the financial reports --
01:38 10 which year are you --
11 CHIEF JUDGE JONES: Year 2000.
12 JUDGE BENAVIDES: 2000 -- of course, if it was filed
13 in 2001, it would refer to the calendar year ending 2000.
14 MR. FINDER: Correct.
01:38 15 JUDGE BENAVIDES: All right.
16 MR. FINDER: For calendar year 2000, that is on
17 Page 239. That is correct, your Honor.
18 BY MR. FINDER:
19 Q. Judge Porteous, over the years, how much cash have you
01:38 20 received from Jake Amato and Bob Creely or their law firm?
21 A. I have no earthly idea.
22 THE REPORTER: I'm sorry?
23 MR. FINDER: I'm sorry. Jake Amato, A-M-A-T-O. Jacob
24 Amato, Robert Creely, C-R-E-E-L-Y, or their law firm.
19 25 BY MR. FINDER:

9 1 Q. Amato & Creely, I believe they are called.
2 A. Right.
3 Q. Is that correct?
4 A. Yeah.
01:39 5 Q. You do not know how much you've received from them?
6 A. I do not.
7 Q. Those men or their -- and/or their firm, correct?
8 A. That's correct.
9 Q. It could have been \$10,000 or more. Isn't that right?
01:39 10 A. Again, you're asking me to speculate. I have no idea is
11 all I can tell you.
12 Q. When did you first start getting cash from Messrs. Amato,
13 Creely, or their law firm?
14 A. Probably when I was on state bench.
01:39 15 Q. And that practice continued into 1994, when you became a
16 federal judge, did it not?
17 A. I believe that's correct.
18 Q. Now, when Messrs. Amato and Creely -- and I'm only talking
19 about them right now --
01:39 20 A. I understand.
21 Q. -- and their law firm, not -- we'll talk about others
22 later. But when those men gave you money, did you consider it
23 a gift or a loan or income?
24 A. I never considered it income. It was either a gift or a
10 25 loan.

1 Q. Okay. If it was a loan, did you ever pay it back?
2 A. No, I didn't.
3 Q. Then, it became income, correct?
4 A. I don't know.
01:40 5 Q. Well, again, your Honor, I don't want to argue with you;
6 but --
7 A. I'm not arguing with you.
8 Q. -- if I loan you a hundred dollars and you don't pay it
9 back, that becomes income, correct?
01:40 10 A. It still may be a gift.
11 Q. If it was a loan and it's not forgiven as a gift, then it's
12 income, correct?
13 A. Right.
14 Q. But none of that ever appeared in your federal tax
01:40 15 return --
16 A. No --
17 Q. -- as income, correct?
18 A. -- it did not.
19 Q. Now, if it was a gift, it would have been on your financial
01:40 20 disclosure reports for 1994, which starts at Bates 215; 1995,
21 which starts at Bates 219; 1996, which starts at Bates 223;
22 1997, which starts at Bates 227; 1998, Bates 231; through 1999,
23 Bates 235, which we already reviewed.
24 I could show you these, Judge Porteous; but I'll
41 25 just ask you the question. Did you ever list any gifts from

1 Amato or Creely, cash gifts, in any of these financial
2 disclosures?
3 A. No.
4 Q. But you certified every one as being true and correct?
01:41 5 A. Correct.
6 Q. And there was an omission, then, correct?
7 A. Not that I'm aware of.
8 Q. Well, if someone gave you money during those years and it
9 was more than \$250, wouldn't that be reportable?
01:41 10 A. I do not recall receiving any cash from them during that --
11 Q. Do you recall in 1999, in the summer, May, June, receiving
12 \$2,000 for them?
13 A. I've read Mr. Amato's grand jury testimony. It says we
14 were fishing and I made some representation that I was having
01:42 15 difficulties and that they loaned me some money or gave me some
16 money.
17 Q. You don't -- you're not denying it; you just don't remember
18 it?
19 A. I just don't have any recollection of it, but that would
01:42 20 have fallen in the category of a loan from a friend. That's
21 all.
22 Q. Has the loan ever been paid back --
23 A. No.
24 Q. -- if you got it?
12 25 A. No.

2 1 JUDGE BENAVIDES: Were any loans reported on the
2 disclosure statements?
3 MR. FINDER: No, sir.
4 THE WITNESS: I believe -- I'm not sure, but I don't
01:42 5 know the reported amount on the loans.
6 JUDGE BENAVIDES: But whether a loan or a gift, it
7 wasn't -- it wasn't --
8 THE WITNESS: It wasn't reported.
9 JUDGE BENAVIDES: -- to the extent that they might
01:42 10 exist, they weren't reported, either as a loan or a gift?
11 THE WITNESS: That's correct, Judge.
12 MR. FINDER: Right.
13 BY MR. FINDER:
14 Q. The exhibits that I just talked about, the years 1994
01:42 15 through '99, all have sections on liabilities and those are not
16 reported?
17 A. That's right.
18 Q. If I misstate, please correct me.
19 A. No. You're correct.
01:43 20 Q. Other than gifts of cash, did you ever fail to report --
21 from lawyers or others, not just Creely and Amato or their law
22 firm, but anybody else, not including your personal family
23 members -- cash gifts for entertainment or family needs,
24 including but not limited to hunting trips, fishing trips,
3 25 airfare, lodging, dining, trips out of the country or out of

1 state, such as Washington, D.C. or Las Vegas, parties for your
2 children, stipends for your children, tuition for your
3 children, car notes, mortgage payments, or gambling expenses
4 for you or your wife?

01:43 5 A. I'm sure I didn't include anything on that.

6 Q. And I have the reports here if you want to refresh your
7 recollection.

8 A. I understand.

9 Q. Did you ever report gifts that your court staff may have
01:43 10 received along with you, such as dining, travel, or
11 entertainment?

12 A. I'm sure I didn't.

13 Q. And I could go through that for every one of these
14 reporting years, but would that be -- your answer be the same
01:44 15 for years 1994, 19 -- through 1999 inclusive?

16 A. I absolutely agree that that's what those documents show
17 and certify.

18 JUDGE BENAVIDES: You're referring to the same
19 questions as to reporting on those other years?

01:44 20 MR. FINDER: Yes, sir.

21 JUDGE BENAVIDES: All right. Counsel, with respect to
22 that last question, was -- was there an exception -- I thought
23 there was a report of a couple of fishing -- hunting trips or
24 fishing trips.

5 25 MR. FINDER: I believe those were Bar -- related to

5 1 Bar associations, but let me look quickly so I don't make a
2 mistake.

3 JUDGE BENAVIDES: I thought there were a couple of
4 trips that he reported, at least in the exhibits that I saw.

01:45 5 MR. WOODS: Two hunting trips.
6 JUDGE BENAVIDES: Two hunting trips.
7 MR. WOODS: Rowan and the other --
8 THE REPORTER: I'm sorry?
9 MR. WOODS: I'm sorry.

01:45 10 THE WITNESS: There were two included in the original
11 complaint filed by Justice, but not included in the ultimate
12 charge from the Court.

13 BY MR. FINDER:
14 Q. In the documents that I referred to, I didn't see hunting
01:46 15 trips. I've seen reimbursements from Bar associations, but not
16 hunting trips; and if I missed it, please correct me.
17 A. We had --

18 MR. WOODS: Judge Porteous is correct. There are two
19 instances on his financial disclosure forms where he reports a
01:46 20 Rowan -- Rowan Drilling Company trip.
21 THE WITNESS: "Rowan." Yeah.
22 MR. WOODS: And one other, Diamond.
23 THE REPORTER: I'm sorry?
24 THE WITNESS: Diamond.
46 25 MR. WOODS: Diamond Drilling Company.

6 1 JUDGE BENAVIDES: So, with those exceptions, there was
2 no reports --

3 MR. WOODS: Yes.

4 JUDGE BENAVIDES: -- of loans or gifts or anything
01:46 5 with respect to hunting trips or any of these other things,
6 with the exceptions of those ones? "

7 MR. WOODS: That's correct. There are none except
8 those two.

9 MR. FINDER: And I'm still looking, and I haven't seen
01:47 10 them. So, I'm not sure if it's for these years or not; but I
11 think --

12 JUDGE BENAVIDES: I don't know. It may be a
(13 different reporting period.

14 (Sotto voce discussion between counsel)

11:59 15 BY MR. FINDER:

16 Q. Judge Porteous, I'm going to show you from Exhibit 20 --

17 MR. FINDER: Bates Number 585, your Honors. Let me
18 make this smaller.

19 BY MR. FINDER:

01:48 20 Q. Do you recognize this, sir, a casino credit application for
21 Harrah's casino?

22 A. Yes, sir, that's what it says.

23 Q. Okay... And the purpose of this is what?

24 A. To be able to sign markers.

'8 25 Q. Correct.

1 And it is dated April 30th, 2001, correct?

2 A. Right.

3 Q. And that is just two days -- three days -- March has 31

4 days -- three days after bankruptcy, correct?

01:48 5 A. Yes, sir.

6 No. Wait.

7 MR. WOODS: April.

8 BY MR. FINDER:

9 Q. April. I'm sorry.

01:48 10 After your -- forgive me. After your amended

11 petition, it was a couple -- two and half, three weeks after

12 your amended petition?

13 A. Yes, sir.

14 Q. You list under "Financial Information" income of over a

01:48 15 hundred thousand --

16 A. Right.

17 Q. -- in salary.

18 Over \$250,000 in a home?

19 A. Right.

01:48 20 Q. Indebtedness, zero, correct?

21 A. That's not my handwriting. I don't -- I don't know who

22 filled that out.

23 Q. Is this your handwriting?

24 A. That is.

19 25 Q. So, you don't know --

9 1 A. That is not my handwriting.
2 Q. Well, when you signed this, was there anything on there?
3 Did somebody put it on there after you signed it?
4 A. I have -- cannot tell you that. I don't know that. But
01:49 5 that is not my handwriting.
6 Q. And --
7 A. If I look at the rest of it, I can tell you if it is.
8 Q. Well -- (Indicating).
9 A. The rest of it -- now, don't -- okay. You get towards the
01:49 10 top, that's --
11 JUDGE BENAVIDES: There's a certification above your
12 handwriting. "I certify that I reviewed all the information
13 provided above and it is true and accurate."
14 THE WITNESS: I don't -- yeah, Judge. I'm just saying
01:49 15 it's not my handwriting is all.
16 BY MR. FINDER:
17 Q. So, even though it's certified as being true and correct,
18 you don't take responsibility for the indebtedness --
19 A. I don't know that that was on there when I signed it. I
01:49 20 just don't have any recollection.
21 Q. We talked about Messrs. Creely and Amato and their law
22 firm, the law firm of Creely & Amato.
23 A. Right.
24 Q. Mr. Creely is what kind of a lawyer? What kind of a
50 25 practice would you say he has?

1 A. Over the years, I think it's changed. Now he -- he was
2 in -- for awhile into multidistrict litigation, complex
3 litigation, class action type litigation.
4 Q. Mr. Amato started off pretty much as a personal injury
01:50 5 lawyer, didn't he?
6 A. Yeah.
7 Q. And throughout most of his career considered himself --
8 A. I think he was a personal injury lawyer. I never knew Jake
9 to take a divorce case or anything like that.
01:50 10 Q. And nor did he practice that often in federal court,
11 correct? As far as you know?
12 A. As far as I know.
13 Q. Other than Messrs. Creely and Amato and their law firm, we
14 talked about other lawyers in this case, such as Mr. Levenson.
01:51 15 Have you received any cash from Mr. Levenson?
16 A. No, not that I -- to the best of my knowledge, I have never
17 received any cash from Mr. Levenson.
18 Q. But Mr. Levenson, along with Messrs. Creely and Amato, it
19 would not be uncommon for them to take you out to lunch?
01:51 20 A. That's correct.
21 Q. And -- or dinners?
22 A. Yeah. On an occasion, I would think, yeah.
23 Q. Well, Mr. Levenson took you out to some places for lunch
24 or -- and/or dinner, such as Ruth's Chris or, before Hurricane
25 Katrina, Smith & Wollensky's. Isn't that correct?

1 A. I'm sure that's correct.
2 Q. And some -- and you were never -- you never paid, did you?
3 A. No.
4 Q. Now, other than Messrs. Amato and Creely, who else had --
01:52 5 what other lawyers -- lawyer friends of yours have given you
6 money over the years?
7 A. Given me money?
8 Q. Money, cash.
9 A. Gardner may have. Probably did.
01:52 10 Q. Let's talk about --
11 A. But I don't recall any others.
12 Q. Let's talk about Mr. Gardner.
13 A. All right.
14 Q. He's also a -- he was a divorce lawyer, wasn't he?
01:52 15 A. Mr. Gardner tries to do everything.
16 Q. So, if he said that he's a family lawyer, he -- that would
17 be --
18 A. I think that's what his practice is now.
19 Q. But not -- as far as you know, his practice is not
01:52 20 primarily in federal court?
21 A. No, not that I'm aware of.
22 Q. And when is the last time Mr. Gardner gave you money?
23 A. Before I took the federal bench, I'm sure.
24 Q. Okay. And do you recall how much?
32 25 A. Absolutely not.

2 1 Q. Now, when you were a state judge, did you ever report any
2 of these cash gifts on your Louisiana disclosure forms?
3 A. No. I don't think we actually received forms, but I don't
4 remember that.

01:53 5 Q. Okay.
6 A. Whether you received a form like the federal government,
7 where you have to fill it out, I don't believe they had
8 reporting forms at the time. I know what the statute says, but
9 I don't think it's like it is in federal court.

01:53 10 Q. Before you became a federal judge, you used -- as a state
11 judge, you used to send something called "curatorships" over to
12 the Creely-Amato firm, did you not?
13 A. And Gardner and all those, yeah.

01:53 14 Q. Just talking about Creely and Amato and their law firm
15 right now. You would occasionally, after sending them
16 curatorships -- and for the record, what is a -- how would you
17 describe a curatorship?
18 A. It's for an absent defendant. It could be in a variety of
19 situations. The most common two are executory process and then
01:53 20 interdiction.
21 Q. And after receiving curatorships, Mr. -- Messrs. Creely
22 and/or Amato and/or their law firm would give you money,
23 correct? ..
24 A. Occasionally.

25 Q. You mentioned before that you read the grand jury

4 1 transcript of Mr. Amato and were familiar with his allegations
2 about a fishing trip?
3 A. Right.
4 JUDGE BENAVIDES: Are you leaving the curatorship?
01:54 5 MR. FINDER: Yes, sir.
6 JUDGE BENAVIDES: You had an "open-ended question about
7 whether he received money from these people after they were
8 appointed a curatorship.
9 MR. FINDER: Yes, sir.
01:54 10 JUDGE BENAVIDES: Do you intend to establish any
11 relationship between the receipt of money and the curatorship?
12 MR. FINDER: Not through this witness.
13 JUDGE BENAVIDES: Okay.
14 MR. FINDER: But if the Court has questions --
01:54 15 JUDGE BENAVIDES: I just didn't know whether to -- I
16 don't want to interrupt you --
17 MR. FINDER: That's all right.
18 JUDGE BENAVIDES: -- or your train of thought about it
19 but --
01:54 20 MR. FINDER: Okay. Well, let -- well, we'll -- so I
21 won't have it open-ended, let me ask the question.
22 JUDGE BENAVIDES: Go ahead.
23 BY MR. FINDER:
24 Q. During the time you were giving Creely and Amato and the
55 25 law firm curatorships and you were getting cash back, was that

35 1 cash that you received a kickback for the curatorship, in your
2 mind?

3 A. No, sir.

4 Q. Not in your mind?

01:55 5 A. Not in my mind.

6 JUDGE BENAVIDES: Let me ask a question. According --
7 and it's -- you have been afforded the grand jury testimony, we
8 have seen the grand jury testimony, everybody has seen the
9 grand jury testimony. But it would seem that there is
01:55 10 testimony before the grand jury that there was a return in the
11 exact same amount, minus expenses, of the curatorship that was
12 returned to you, according to one of the witnesses.

13 THE WITNESS: That's apparently what it says. I
14 agree.

01:55 15 JUDGE BENAVIDES: Is that true or not?

16 THE WITNESS: Not -- to the best of my knowledge, that
17 is not correct.

18 JUDGE BENAVIDES: You would not know whether you would
19 receive the same money after appointing someone a curator that
01:55 20 he would get, minus his expenses?

21 THE WITNESS: I don't recall that occurring.
22 You're ask -- again, we're back to 1994 and before. I know I
23 sent them curators --

24 JUDGE BENAVIDES: You know, you have immunity --

56 25 THE WITNESS: I know.

1 JUDGE BENAVIDES: -- from all criminal prosecution --
2 THE WITNESS: I understand.
3 JUDGE BENAVIDES: -- except perjury.
4 THE WITNESS: I understand that.
01:56 5 JUDGE BENAVIDES: And your -- and, so, that would
6 be -- if it matched the expense -- the amount each time --
7 THE WITNESS: I don't --
8 JUDGE BENAVIDES: -- except for expenses, that would
9 be a coincidence?
01:56 10 THE WITNESS: I don't know if it matched each time.
11 That's all I can tell you, Judge. I don't know.
12 JUDGE BENAVIDES: I understand.
13 BY MR. FINDER:
14 Q. Didn't you start sending -- Judge Porteous, didn't you
01:56 15 start sending curatorships over to Mr. Creely when he demurred
16 to get -- give you more money?
17 A. I've read his testimony. I know that's what he says. I
18 just -- he "demurred."
19 Q. Maybe I'll use a different word instead of "demurred."
01:57 20 A. "Refused."
21 Q. Objected to or refused to give you more money, isn't that
22 when the curatorships started?
23 A. I don't know the date the curatorships started; so, I can't
24 tell you that.
57 25 Q. Do you recall --

7 1 A. I don't remember when I first started sending them.
2 Q. Do you recall calling Mr. Creely's secretary and saying,
3 "How much have you received in curatorships" before asking for
4 money?
01:57 5 A. I don't recall calling her. I'm not saying I've never
6 spoken with his secretary.
7 Q. Do you recall Mr. Creely refusing to pay you money before
8 the curatorships started?
9 A. He may have said I needed to get my finances under control,
01:57 10 yeah.
11 Q. And the curatorships, therefore, would be a source of
12 income for Mr. Creely -- to pass through Mr. Creely and his
13 firm to you, correct?
14 A. That's a speculation or opinion. I don't -- I don't know
01:57 15 what you want to call it.
16 Q. What is your recollection in May or June of 1999 of going
17 on a fishing trip with Mr. Amato? Do you recall going on a
18 fishing trip?
19 A. I know I went with Jake on a trip with Mitch Mullin.
01:58 20 Q. Actually, you went on a lot of fishing trips with Amato and
21 Creely, mainly Creely.
22 Have you heard of a place called Delacroix?
23 A. Oh, yeah, "Delacroix."
24 Q. "Delacroix." Excuse me for my mispronunciation.
58 25 That's property that he either owned or had a

1 lease on, correct?

2 A. Correct.

3 Q. And fishing would often take place there, correct?

4 A. Oh, yeah.

01:58 5 Q. And not just you but other elected officials would be
6 invited?

7 A. The judges, yes.

8 Q. And you went fishing there numerous times?

9 A. Over the years?

01:58 10 Q. Yes.

11 A. Yeah.

12 Q. You never were charged for any mode of --

13 A. No, sir.

14 Q. -- transportation, any refreshments, things of that nature?

01:58 15 A. No, sir.

16 Q. All right. So, getting back to the fishing trip with

17 Mr. Amato in May or June of 1999, which you -- which you

18 referenced, you brought up, Mr. Amato -- do you recall telling

19 Mr. Amato in a very emotional way that you had a wedding coming

01:59 20 up and you needed cash?

21 A. I did have a wedding coming up. You're asking me if I -- I

22 don't recall a conversation with Jake.

23 Q. Who was getting married?

24 A. Timmy.

59 25 In '99?

1 Q. Yes.
2 A. Timmy.
3 Q. Your son Timmy?
4 A. Right.
01:59 5 Q. And that's the bachelor party you also went to in
6 Las Vegas. We'll get --
7 A. That's correct.
8 Q. -- to in a moment. Correct?
9 A. Correct.
01:59 10 Q. Well, whether or not you recall asking Mr. Amato for money
11 during this fishing trip, do you recall getting an envelope
12 with \$2,000 shortly thereafter?
13 A. Yeah. Something seems to suggest that there may have been
14 an envelope. I don't remember the size of an envelope, how I
01:59 15 got the envelope, or anything about it.
16 Q. Do you recall sending Rhonda Danos over to get the
17 envelope?
18 A. Rhonda has gone to Jake and Bob's office on numerous
19 occasions. I don't even know if she went in '99.
02:00 20 Q. Judge, I know 1999 was almost a decade ago; but if you
21 received an envelope from lawyers -- a sealed envelope that had
22 a couple thousand dollars cash in it, do you think you would
23 remember that?
24 A. That's what I'm saying. I don't know if it was a sealed
25 envelope, a bank envelope, or what.

0 1 Q. Okay. Let me --
2 JUDGE LAKE: Wait a second. Is it the nature of the
3 envelope you're disputing?
4 THE WITNESS: No. Money was received in envelope.
02:00 5 JUDGE LAKE: And had cash in it?
6 THE WITNESS: Yes, sir.
7 JUDGE LAKE: And it was from Creely and/or --
8 THE WITNESS: Amato.
9 JUDGE LAKE: -- Amato?
02:00 10 THE WITNESS: Yes.
11 JUDGE LAKE: And it was used to pay for your son's
12 wedding?
13 THE WITNESS: To help defray the cost, yeah.
14 JUDGE LAKE: And was used --
02:00 15 THE WITNESS: They loaned -- my impression was it was
16 a loan.
17 JUDGE LAKE: And would you dispute that the amount was
18 \$2,000?
19 THE WITNESS: I don't have any basis to dispute it.
01:05 20 JUDGE LAKE: All right. Thank you.
21 BY MR. FINDER:
22 Q. Your impression was that it was a loan was what you just
23 said, correct?
24 A. Yes.
00 25 Q. Did you ever pay back the loan?

02:00 1 A. No, I didn't. I declared bankruptcy in 2001; and, of
2 course, I didn't list it.
3 Q. But it wasn't listed as paid --
4 A. No, it wasn't listed.
02:01 5 Q. So, did you ever pay back the loan --
6 A. No.
7 Q. -- was my question.
8 A. No.
9 Q. Then, it was income. Is that right?
02:01 10 A. You're saying it's income. If that's what the rules
11 provide --
12 Q. Sir, I don't say anything. I'm asking you a question.
13 .. If it's a loan and it's not paid back, you're a
14 federal judge, you know some law --
02:01 15 A. It's income.
16 Q. -- it's income, right?
17 A. All right.
18 Q. But it was never reported on your tax returns, was it?
19 A. No, it was not.
02:01 20 Q. It was never reported on the judicial disclosure form under
21 "Other Income," was it?
22 A. No.
23 Q. Let's talk about the bachelor party.
24 A. All right.
01 25 Q. In approximately May of 1999, your son Timmy was going to

01 1 get married that summer, correct?
2 A. Right.
3 Q. And Rhonda, I believe, even helped with the arrangements
4 for a party, for you, some of your lawyer and non-lawyer
02:01 5 friends, and Timmy to go to Las Vegas, correct?
6 I believe you stayed at New York-New York?
7 A. No. I believe we stayed at Caesars.
8 Q. Was it Caesars? Maybe it was just the ride at New York-New
9 York. There was a picture taken. Do you remember that?
02:02 10 A. Yeah, there was a -- some kind of amusement there.
11 Q. Now, lawyers paid for you to go, did they not? They gave
12 you money to go on that trip, did they not?
13 A. I believe the allegations are that there was a ticket that
14 Forstall had purchased at some point, that I used.
02:02 15 Q. Mr. Forstall is Chip Forstall, right?
16 A. Right.
17 Q. He gave you a ticket; and then he ended up not going,
18 correct?
19 A. Not for this trip. This was another trip.
02:02 20 Q. Okay. The other trip was to San Francisco, I believe; and
21 he didn't go?
22 A. None of us went.
23 Q. Okay. But you had the ticket?
24 A. Right.
02 25 Q. And you used that ticket, you're saying, to go to

2 1 Las Vegas?

2 A. I may have.

3 Q. Well, once you get to Las Vegas, you have to stay in a

4 room, right?

02:02 5 A. Right.

6 Q. You didn't pay for the room, did you?

7 A. It appears I did not.

8 Q. And do you know who paid for it?

9 A. It appears Mr. Creely paid for it.

02:02 10 Q. Mr. Creely, that's right.

11 Now, that was over a period of approximately four

12 days, as I recall, from the records?

13 A. Three or four.

14 Q. Three or four.

02:03 15 That exceeded \$250 total for the room, correct?

16 A. Yeah.

17 Q. Did that ever appear on your judicial --

18 A. No, it did not.

19 Q. -- your form that you file with the administrative office?

02:03 20 A. No, it did not.

21 Q. It did not.

22 Although you considered that a gift, correct?

23 A. Yeah, it was a gift. I mean, Creely got there before we

24 all did. I know he checked me in.

03 25 Q. And it wasn't just for you. It was also for Timmy?

03 1 A. What?
2 Q. Timmy stayed for free?
3 A. Not because of Mr. Creely.
4 Q. Well, somebody paid for Timmy, right?
02:03 5 A. I went down and asked the casino to comp their room, and I
6 think they did.
7 Q. So, if -- so, it's your testimony here today it was not
8 Mr. Creely or one of your other friends that picked up the tab
9 for his room?
02:03 10 A. Not that I -- for Timmy's room?
11 Q. For Timmy.
12 A. No, sir, not that I'm aware of.
13 " I'm trying to remember who was in that room.
14 Probably all my sons were in that room.
02:04 15 Q. And when you were in Las Vegas, you had to eat?
16 A. Yes.
17 Q. And you didn't just eat in the hotel you were staying at;
18 you ate in other places, too, correct?
19 A. We had one outside meal that I can recall.
02:04 20 Q. But you didn't pay for that meal, did you?
21 A. No, I did not.
22 Q. Who paid for it?
23 A. A variety -- I think Creely did and maybe some other people
24 picked up various portions.
04 25 Q. But the bottom line is that wasn't comped?

1 A. That was not comped.
2 Q. And when I say "comped," I'm talking about complimentary --
3 A. No.
4 Q. -- where a hotel --
02:04 5 A. No.
6 Q. -- would pick up the fee, correct?
7 A. No.
8 Q. And nothing from that trip to Las Vegas, for you and your
9 sons -- who was your other son, by the way, that went?
02:04 10 A. Michael.
11 Q. Michael.
12 Nothing that went to you or your two children, in
13 your immediate family, was ever reported under a judicial
14 disclosure form, correct?
02:05 15 A. No, sir.
16 JUDGE BENAVIDES: How old were the children at that
17 time?
18 MR. FINDER: I'm sorry?
19 JUDGE BENAVIDES: How old were the boys at that time?
02:05 20 THE WITNESS: Give me a second, Judge. '99?
21 JUDGE BENAVIDES: Oh, let me ask --
22 THE WITNESS: 28, 26, and 23.
23 JUDGE BENAVIDES: Okay. They weren't dependents
24 living at home?
02:05 25 THE WITNESS: Oh, no, sir.

5 1 JUDGE BENAVIDES: All right.

2 JUDGE LAKE: Did Mr. Creely or Mr. Amato or the other

3 attorneys reimburse the casino for any gambling losses you had,

4 Judge?

02:05 5 THE WITNESS: Absolutely not.

6 BY MR. FINDER:

7 Q. Let me jump ahead, then, in light of that question. On

8 Exhibit 48 -- I believe it's 48 -- yeah, Bates Number 997, 998,

9 the records from Caesar -- I believe that is from Caesars

02:06 10 Palace.

11 A. All right.

12 Q. May 20th, 1999, that's when you were in Las Vegas for the

13 bachelor party, correct?

14 A. I believe so.

02:06 15 Q. Okay. Well --

16 A. May -- I know we went '99. It's before the wedding.

17 That's the right date.

18 Q. I mean --

19 A. It's before the wedding.

02:06 20 Q. For the record, that's your name, correct?

21 A. Right.

22 Q. And that's the city where you live, correct?

23 A. Right.

24 Q. And were you also there in October of '99?

06 25 A. Certainly appears that I was.

1 Q. Okay. Well, let's talk about May.
2 A. All right.
3 Q. May 20th, 1999, looks like gambling losses of \$1200,
4 correct?
02:06 5 MR. FINDER: And we're going to follow up with a
6 summary witness on this, but I wanted to jump ahead.
7 JUDGE BENAVIDES: I don't know if you got a response
8 to that last question.
9 MR. FINDER: I'm going to clarify it with the next
02:07 10 page.
11 BY MR. FINDER:
12 Q. In all fairness, since -- I should have asked you this
13 question, Judge. Forgive me.
14 A. All right.
02:07 15 Q. Have you ever seen this record before?
16 A. If it's one of the exhibits, I know you sent it to me.
17 Q. Yes. It's from Exhibit 48.
18 A. Okay. But I don't recall -- I didn't look at it. If you
19 sent it to me, I've got it.
02:07 20 Q. Okay. The very next page, Bates Number 998 --
21 A. All right.
22 Q. -- the same exhibit, 48 --
23 A. Fine..
24 Q. -- it shows from the period May 20 to May 22. And on the
07 25 prior page, we were talking about May 20. So, that's

1 consistent, correct?

2 A. All right. All right.

3 Q. "Win/loss," and it shows negative -- or 1,200 with a minus

4 sign, correct?

02:08 5 A. Yeah.

6 Q. Would that suggest to you that's a loss of \$1200?

7 A. It appears to be.

8 Q. Okay.

9 A. Okay. Wait. Let me just see something.

02:08 10 Okay. All right.

11 Q. For the record, that's the number, "998"?

12 A. Yeah.

13 Q. Now, as you said, you were only in Las Vegas for about

14 three or four days, right?

02:08 15 A. Yeah.

16 Q. Okay. Let's look at your Fidelity Bank statement for

17 May 25th. Shows a deposit of \$5,000?

18 A. Correct.

19 Q. Was that -- were those winnings?

02:08 20 A. They were.

21 Q. So, you won at some casino, even though it wasn't the one

22 we just looked at?

23 A. I was able to bring that much money home, but it was still

24 owed on credit cards. So, I -- when you say it was a winning,

08 25 I basically broke even when you added it all up.

1 Q. So, let's get this straight. You've -- your amended
2 petition was filed -- or your bankruptcy, was filed in 2000.
3 About six months -- or nine months, perhaps, before that, you
4 were in Las Vegas, gambling, and you came back with \$5,000
02:09 5 after you lost about 1200 at a different casino, correct?
6 A. I don't know if it's a different casino.
7 Q. It could have been the same one?
8 A. Could have been the same one.
9 Q. Well, but the records don't show winnings, do they?
02:09 10 A. You know -- well, when you're playing at a table and
11 winning, casinos do not traditionally keep track of that.
12 That trip, if you have those records, I think
13 would probably establish that the markers I signed on the very
14 first night there were paid off that very same day; but they
02:09 15 don't show the -- how the money was given out. They just don't
16 do it that way. That's between the casinos and how they
17 transact business. You're not given a 1099.
18 So, all I can tell you is I did win.
19 Q. So, it's your testimony that that money, the 5,000, was
02:10 20 from gaming; it wasn't from lawyers or friends?
21 A. Came from no one.
22 Q. Okay.
23 JUDGE BENAVIDES: What was the difference? 3800,
24 roughly?
10 25 MR. FINDER: Yes, sir.

0 1 BY MR. FINDER:
2 Q. Judge, do you remember a case called "Liljeberg"?
3 A. I do.
4 Q. Very complex litigation, wasn't it?
02:10 5 A. I would say.
6 Q. As a matter of fact, before you got it, I think it went
7 through several district judges.
8 A. Oh, it went through a bunch of different judges.
9 Q. And, then, one day it ended up in your court; and you were
02:10 10 ultimately the trial judge, correct?
11 A. Right.
12 Q. That lawsuit, sir, was filed -- well, let's not guess.
13 Let me show you what's been marked as Exhibit 82.
14 Do you recognize this as the docket sheet for Liljeberg?
02:11 15 A. Exhibit 82.
16 Q. That's what I have up on the screen.
17 A. Yeah, that would be the docket sheet, which seems to
18 indicate it was filed in '93.
19 Q. What did I say?
02:11 20 A. May --
21 Q. I'm sorry. June 1, 1993. What did I say?
22 A. I don't know.
23 Q. I thought you --
24 A. No, no.
1 25 Q. -- said I misspoke.

1 Okay. Does this appear to be the docket sheet?
2 I'm happy to show it to you.
3 A. Yeah, it appears to be the docket sheet.
4 Q. All right. Let's look at the some of the lawyers on there.
02:11 5 We already talked about this gentleman, Joe -- Joseph Mole --
6 A. Right.
7 Q. -- correct?
8 A. Right.
9 Q. And Don Gardner?
02:11 10 A. Right.
11 Q. Now, Don Gardner, as you said, as far as you know, isn't a
12 federal court practitioner?
13 A. No, as far as I know.
14 Q. And this is a complex case?
02:11 15 A. Very complex.
16 Q. But he's your buddy and he's appearing for the plaintiff,
17 correct?
18 A. Correct.
19 Q. Let's look at some of the defense lawyers.
02:11 20 MR. WOODS: Appearing for the defense.
21 MR. FINDER: "Plaintiff, Lifemark."
22 MR. WOODS: Okay.
23 BY MR. FINDER:
24 Q. For the defendant in Liljeberg -- on -- this docket sheet
12 25 says "Defendant Liljeberg," correct?

1 A. Right.
2 Q. Jacob Amato?
3 A. Right.
4 Q. Who was -- unlike his partner Mr. Creely, who did MDL
02:12 5 cases, Mr. Amato typically didn't do this kind of case, did he?
6 A. I would think that's correct.
7 Q. You don't think I'm correct?
8 A. No. I would think that was correct.
9 Q. Oh, forgive me.
02:12 10 Lenny Levenson?
11 A. Correct.
12 Q. Also not typically trying these type of cases in federal
13 court, correct?
14 A. He -- maybe not federal court, but he did some fairly
02:12 15 complex litigation.
16 Q. Both of whom are your friends, correct?
17 A. Absolutely.
18 Q. And I believe, according to the docket sheet, the case was
19 originally filed June 1, 1993. That's what it says, right?
02:12 20 A. That's what it says.
21 Q. June 1, 1993.
22 A. All right.
23 Q. Now, let's jump ahead to September 19th, 1996. The case
24 has been around for two years, right?
13 25 A. Right.

1 Q. Motion by Party Liljeberg to bring in, among the following
2 attorneys, Jacob Amato and Lenny Levenson, correct?
3 A. Right.
4 Q. You're the judge at this point, right?
02:13 5 A. Right.
6 Q. And you allow them in?
7 A. Yeah.
8 Q. Okay. I skipped one.
9 Let's go back to April 4th, 1996. Lifemark
02:13 10 brings in Joe Mole --
11 A. All right.
12 Q. -- to be one of their lawyers, right?
13 A. Yeah, right.
14 JUDGE BENAVIDES: What was the name? Was that Mole?
02:13 15 MR. FINDER: M-O-L-E, Joe Mole, Joseph Mole.
16 BY MR. FINDER:
17 Q. Then, on September 12th -- and I think we covered this on
18 September 19th, but on September 12th it looks like St. Jude
19 Hospital brings in Lenny Levenson, correct?
02:14 20 A. Right.
21 Q. But St. Jude was affiliated with Liljeberg, right?
22 A. I believe that's correct.
23 Q. And that's why a week later, on September 19th, Levenson is
24 joined by Jake Amato, right?
14 25 A. Yeah.

4 1 Q. Okay. Both of whom I believe you said typically wouldn't
2 be in this kind of case.
3 A. I'm not saying Levenson wouldn't, but Amato typically would
4 not be in this kind of case. Not that he didn't have the
02:14 5 capacity, he just typically wouldn't be in this kind of case.
6 Q. Okay. Then October 2nd, 1996 -- "
7 A. All right.
8 Q. -- Plaintiff Lifemark files a motion to recuse you,
9 correct?
02:15 10 A. Right.
11 Q. And that is scheduled for a hearing, if I'm reading this
12 docket order right, on October 16th, 1996, correct?
13 A. Correct..
14 Q. All right. Frankly, I can't figure out what day you heard
02:15 15 the motion to recuse. Maybe it was by submission. But it
16 looks like on October 17th -- on -- I'm sorry. October 17th
17 the hearing was held.
18 You deny Lifemark's motion to recuse, correct?
19 A. Right.
02:15 20 Q. I'm sorry?
21 A. Yes.
22 Q. All right. After Lifemark loses -- well after -- on
23 March 11th, 1997, they bring in your other friend, Don Gardner,
24 right?
15 25 A. Correct.

5 1 Q. Who also, as I believe you testified before, typically
2 wouldn't be in this kind of case?
3 A. Absolutely.
4 Q. He's a divorce lawyer, right?
02:16 5 A. Right.
6 Q. Or family lawyer. I don't mean to disparage any area --
7 kind of practice.
8 A. Call him a divorce lawyer.
9 Q. Okay. I'm only saying what he calls himself.
02:16 10 A. I understand.
11 Q. And did you think it was unusual for lawyers that don't
12 typically practice in this kind of complex litigation to, all
13 of a sudden, appear before you?
14 A. Yeah, sure do.
02:16 15 Q. Did that concern you or trouble you?
16 A. No, only to the extent that somebody thought they needed to
17 bring somebody else in.
18 Q. Well, did you ever bring it to the attention of any party
19 that, "Hey, guys, here's -- here's Amato and Creely. They've
02:16 20 given me money in the past. I want you to know about that
21 because under the canons of ethics I'm supposed to avoid the
22 appearance of impropriety and tell you about these kind of
23 things and recuse myself if the parties have an objection"?
24 A. I didn't do that.
16 25 Q. So, looks like Mr. Mole, on behalf of Lifemark, brings in

7 1 Don Gardner to kind of even the playing field, so to speak,
2 correct?
3 A. That's --
4 Q. For whatever reason he had, he brought in Mr. Gardner,
02:17 5 right?
6 A. Correct.
7 Q. Because he's already lost the recusal motion, right?
8 A. I don't know if that's why, but he -- he brought him in.
9 Q. Well, it followed the recusal?
02:17 10 A. It followed the recusal.
11 Q. Now, we have a non-jury trial, a bench trial, correct?
12 A. Yeah.
13 Q. And that starts June 16th, 1997?
14 A. Right.
02:17 15 Q. And that's some years after this lawsuit has been filed,
16 correct?
17 A. Yeah.
18 Q. Moving ahead to April 26th -- tried June 16th, and it looks
19 like the trial went, according to -- if I'm reading this right,
02:17 20 Smoothman --
21 A. It ran on for a period of time.
22 Q. At least until July 23rd, 1997, correct, because it says,
23 "matter taken under submission" --
24 A. Yes. Yes.
18 25 Q. -- 1997. And judgment was not rendered until April 26,

8 1 2000, if I'm reading this right --
2 A. You're reading correctly.
3 Q. -- when you had your findings of fact, conclusions of law?
4 A. Right.
02:18 5 Q. Not to beat a dead horse, Judge Porteous, but you've told
6 this panel that Amato and Creely have given you money, although
7 you can't remember specifics, and you think that Gardner has
8 given you money, but that was not disclosed to any of the other
9 lawyers in this case, correct?
02:18 10 A. That was not.
11 Q. Lenny Levenson -- I'm sorry.
12 Don Gardner was -- you stood up at his wedding,
13 correct?
14 A. I went to his wedding. I don't know if I was in it; but,
02:19 15 yeah, I went to his wedding.
16 Q. And you're the godfather of his daughter -- one of his
17 daughters, right?
18 A. Uh-huh.
19 Q. And, Judge Porteous, as we just looked on the docket sheet,
02:19 20 Liljeberg was pending in 19 -- in May, June, 1999 --
21 A. It was.
22 Q. -- when you went to Vegas courtesy of Creely and others and
23 when you got an envelope, whether it's a banker's envelope or
24 manila, some kind of envelope from the Creely-Amato law firm,
19 25 right?

.9 1 A. Yes, sir, it was pending.
 2 Q. That was during the pendency of that lawsuit?
 3 A. Right.
 4 Q. You didn't tell anybody about that, did you?
 02:20 5 A. I did not.
 6 MR. FINDER: May I have a moment to confer with my
 7 co-counsel?
 8 CHIEF JUDGE JONES: Sure.
 9 *(Sotto voce discussion between counsel)*
 02:20 10 MR. FINDER: Judge, may we -- Judges -- excuse me --
 11 may we have a ten minute break?
 12 CHIEF JUDGE JONES: Yes.
 13 MR. FINDER: Thank you.
 14 CHIEF JUDGE JONES: Sure. Ten minutes?
 02:20 15 THE WITNESS: I -- at 2:30? I mean --
 16 CHIEF JUDGE JONES: Yes, till 2:30.
 17 THE WITNESS: Okay.
 18 CHIEF JUDGE JONES: Thank you.
 19 *(Recess taken from 2:20 p.m. to 2:35 p.m.)*
 02:35 20 MR. WOODS: We're excusing Claude Lightfoot from our
 21 witness list, but Judge Porteous may want to call him; so, he's
 22 going to be on call for --
 23 MR. WINSBERG: We'll be available if there's any need.
 24 CHIEF JUDGE JONES: All right.
 16 25 MR. WOODS: And we are also excusing Don Gardner.

6 1 JUDGE LAKE: I want to ask -- may I ask Judge Porteous
2 a question about Mr. Gardner?

3 MR. WOODS: Yes, your Honor. I think Mr. Finder was
4 going to finish up; and then we were going to allow him to
02:36 5 either testify or for you-all to ask questions, however -- what
6 procedure do you want to follow?

7 JUDGE LAKE: Let me just ask him a question.

8 Judge Porteous, during the Liljeberg case, while
9 you were assigned to the case, did Mr. Gardner give you any
02:36 10 money or give you any consideration of any type, in the form of
11 expenses for trips or anything of that nature?

12 THE WITNESS: No, Judge, not to my recollection, he
13 did not. Now, the bachelor party, of course, being at the same
14 time, I'm not saying that when we were in Vegas he didn't buy a
02:36 15 round of drinks or something; but to the best of my knowledge,
16 no.

17 JUDGE LAKE: Okay. So, other than the bachelor party,
18 you don't recall Gardner giving you anything of value during
19 the pendency of the Liljeberg case?

02:37 20 THE WITNESS: No, I do not, Judge.

21 JUDGE LAKE: Thank you.

22 THE WITNESS: He and I have been friends for a long --

23 JUDGE BENAVIDES: And you're fixing to let Gardner
24 leave?

17 25 MR. WOODS: Yes, your Honor.

1 JUDGE BENAVIDES: What do we have with respect to
2 Gardner's role, if any, in the bachelor party and the time
3 period for that?
4 MR. WOODS: Merely the fact that he attended,
02:37 5 your Honor. We have no testimony from Gardner that he gave him
6 money during that period of time.
7 JUDGE BENAVIDES: During the time that he was
8 associated with the Liljeberg case?
9 MR. WOODS: Yes, your Honor. Yes, your Honor.
02:37 10 MR. FINDER: All right. May I finish up now?
11 JUDGE LAKE: Yes.
12 BY MR. FINDER:
13 Q. Judge Porteous, I showed you Exhibit 80 when we started off
14 this morning --
02:38 15 A. You did.
16 Q. -- your oath. Do you feel you have given true faith and
17 allegiance to the United States since you've been a United
18 States District Judge?
19 A. Yes, because I've been fair and impartial in every
02:38 20 proceeding that comes before me.
21 MR. FINDER: No further questions of the witness.
22 CHIEF JUDGE JONES: Are you going to ask some more
23 questions about the casino markers?
24 MR. FINDER: About what, your Honor?
38 25 CHIEF JUDGE JONES: Are you going to ask more

02:38 1 questions about the casino markers?

2 MR. WOODS: We're going to have a witness testify

3 about those.

4 MR. FINDER: Not of this witness, but we are going to

02:39 5 ask more questions of other witnesses.

6 CHIEF JUDGE JONES: Okay.

7 Judge Porteous, if you had all this to do over

8 again, would you have filed different financial disclosure

9 statements?

02:39 10 THE WITNESS: Likely, Judge. I mean, maybe now in

11 hindsight some of it was -- should have been included. The

12 debt was -- the failure to list the correct debt, that was

13 right after the bankruptcy. It was like the end of the world.

14 I mean, my wife was nervous, a wreck, upset. My finances were

02:39 15 all over the paper. Everybody in America knew my finances. It

16 was just inadvertence, not any intent to hide my finances.

17 Hell, they were part of the bankruptcy record.

18 They were all over the newspaper.

19 JUDGE BENAVIDES: All right. The letter from

02:39 20 Lightfoot to the creditors made specific reference to the

21 exclusion of the -- to exclude this bank with the \$5,000 loan.

22 Why was there a specific reference to exclude them from those

23 unsecured-creditors that you and Lightfoot were seeking a

24 workout agreement with?

10 25 THE WITNESS: Buddy Butler, as I said before, was --

02:40 1 is and was a friend of mine. To the extent possible, I wanted
2 to try and pay Buddy back all of his money.

3 JUDGE BENAVIDES: So, you don't, then, disagree
4 that -- that this bank was not put -- or reported in your
02:40 5 bankruptcy proceeding as an unsecured creditor, that that was
6 purposefully done?

7 It was done because you wanted to take care of
8 what you thought was an obligation to a good friend; but there
9 was a specific, conscious decision to exclude it from --
02:41 10 exclude them as -- from your list of unsecured creditors?

11 THE WITNESS: No, no, not from my ultimate list of
12 unsecured creditors. They were listed as -- when I filed the
13 bankruptcy. But in the potential attempt to avoid bankruptcy,
14 Claude Lightfoot attempted to work out payoffs with all of
02:41 15 these creditors where I would pay them X percentage, but I was
16 omitting Regions from that.

17 JUDGE BENAVIDES: You conscious -- it seems like there
18 was a conscious desire in the workout agreements not to include
19 the bank with the \$5,000 loan to it.

02:41 20 THE WITNESS: That's correct.

21 JUDGE BENAVIDES: And then -- and, then, there was a
22 provision, with respect to payments made prior to the
23 bankruptcy filing, which would have been -- which would have
24 shown that -- well, it's kind of like they weren't there but
2 25 they -- did you actually pay them off?

2 1 Actually, they wound up not protected, right,
2 with the rest of the unsecured creditors?
3 THE WITNESS: Who is that, Judge?
4 CHIEF JUDGE JONES: The Regions Bank.
02:42 5 JUDGE BENAVIDES: Regions Bank.
6 THE WITNESS: They were always an unsecured creditor.
7 JUDGE BENAVIDES: And you're saying that every
8 application that you've had, everything that you had in the --
9 in the bankruptcy court listed the bank?
02:42 10 THE WITNESS: Oh, in the bankruptcy court?
11 Absolutely.
12 CHIEF JUDGE JONES: I guess what rings a bit hollow --
13 and maybe you can comment on this, because it's not quite a
14 question. But you say you thought -- were thinking you wanted
02:42 15 to treat your friend fairly. Well, you didn't write down the
16 Fleet Credit Card, and that got paid off so you could maintain
17 that while the bankruptcy was going on. And, then, you also
18 continued to pay off some of the gambling debts. But you could
19 have -- you could have excluded Fleet and paid that one on the
02:42 20 side, too, even though that wouldn't be standard bankruptcy.
21 THE WITNESS: Judge, I've read Mr. Lightfoot's grand
22 jury testimony; and I see that Fleet was paid off. I see that.
23 CHIEF JUDGE JONES: By your secretary.
24 THE WITNESS: Yeah, it appears it was paid by my
43 25 secretary. It was. That is a card -- it was my wife's card.

1 My understanding --

2 JUDGE BENAVIDES: Did you --

3 THE WITNESS: My understanding was all the cards were
4 torn up. I did not know she had kept that card active until
02:43 5 well after the fact. And that is something she should not have
6 done, but she did. And I've got no defense for her, but she
7 did.

8 JUDGE BENAVIDES: Who is that that shouldn't have done
9 that?

02:43 10 THE WITNESS: My wife.

11 JUDGE BENAVIDES: Not the secretary? It wasn't the
12 secretary that shouldn't have paid it?

13 THE WITNESS: No, I'm not talking about the payment.
14 I'm talking about the use of the card thereafter, Judge.

02:43 15 That is just something I regret her doing. As
16 you can tell, it had some casino charges on it, probably
17 several. I don't know when that card was ultimately ended.
18 But I thought she had torn up and cut up all the cards, but
19 that apparently did not happen.

02:44 20 CHIEF JUDGE JONES: So, she paid that with her
21 separate income?

22 THE WITNESS: I don't know how it got paid, Judge. It
23 probably came out of my checking -- most of the times checks
24 written on my checking account -- I know you-all find this
4 25 incredible but -- I may have some checks there that I signed,

02:44 1 but the -- my wife dealt with paying the bills. So, I just --
 2 CHIEF JUDGE JONES: That's not what Rhonda Danos said.
 3 THE WITNESS: My home bills, my wife -- all you had --
 4 I'm sure they have the checks. You'll find that her name
 02:44 5 appears on 90 percent of them. So, I don't know what Rhonda
 6 Danos may say about that.
 7 JUDGE BENAVIDES: Well, how would -- how would
 8 Ms. Danos -- I'm just trying to understand. If your wife
 9 normally took care of those type of bills, how would have Danos
 02:44 10 been authorized or why she would -- why would she have paid
 11 that bill?
 12 THE WITNESS: I don't -- I didn't know that -- till I
 13 just saw it; I didn't realize it happened. I don't know,
 14 Judge. I can't give you an answer. I'm just being
 02:45 15 straightforward with you. I can't tell you why. I don't know.
 16 What I would like to do is make a statement in
 17 response to that, but I'd rather wait till they complete their
 18 case before I do that.
 19 CHIEF JUDGE JONES: That's fine.
 02:45 20 THE WITNESS: Okay?
 21 CHIEF JUDGE JONES: Yes.
 22 MR. WOODS: Our next witness is Joseph Mole, and
 23 Robert Creely and Amato are on their way. They were ten
 24 minutes away, and they were called five minutes ago. So,
 02:45 25 they -- those are our next three witness.

02:45 1 JUDGE BENAVIDES: Mole will be a short witness?

2 MR. WOODS: Joseph Mole will be a very short witness,

3 your Honor.

4 And I have offered -- based on Judge Porteous'

02:46 5 testimony, I have offered whether or not he wants to stipulate

6 to the grand jury testimony of Creely and Amato -- and I think

7 he wanted to consider that -- in lieu of -- in lieu of their

8 testimony.

9 JUDGE LAKE: Why don't you call Mr. Mole, then?

02:46 10 MR. WOODS: Yes, sir. He's just right here in the

11 hall. It will just take a moment.

12 Will you ask Mr. Mole in Room 204 to come in?

13 *(Witness being summoned to the stand)*

14 CHIEF JUDGE JONES: Is Ms. Darios coming on as a

02:46 15 witness?

16 MR. WOODS: Yes, your Honor.

17 Mr. Mole, if you would, come up here, sir.

18 The witness is going to be seated here.

19 And that's his counsel, Pat Fanning, that is with

02:47 20 him, your Honor. He's seated back there.

21 JUDGE LAKE: Raise your right hand.

22 Do you solemnly swear that the testimony that you

23 shall give in this proceeding will be the truth, the whole

24 truth, and nothing but the truth, so help you God?

7 25 THE WITNESS: I so swear.

Exhibit 2

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

IN RE MATTERS INVOLVING U.S. :
DISTRICT JUDGE G. THOMAS :
PORTEOUS, JR. :

Wicket
MISC. NO. *07-05-357-0085*

: UNDER SEAL

ORDER

This matter coming to be heard upon the application of the United States of America, by and through applicant Daniel A. Petalas, Trial Attorney, Public Integrity Section, Criminal Division, United States Department of Justice, for an order compelling the witness, the Honorable G. Thomas Porteous, Jr., to testify and provide other information as to all matters about which he may be interrogated in a proceeding before or ancillary to the United States Court of Appeals for the Fifth Circuit, it is hereby:

ORDERED, in compliance with 18 U.S.C. §§ 6002-6003 and pursuant to 28 U.S.C. § 353, that the witness, the Honorable G. Thomas Porteous, Jr., shall provide testimony and other information as to all matters about which he may be interrogated in a proceeding before or ancillary to the United States Court of Appeals for the Fifth Circuit; and that no testimony or other information that he provides under this order and no information directly or indirectly derived from such testimony or other information shall be used against him in any criminal case, except in a prosecution for perjury, making a false statement, or failure to comply with this order.

SC00847

ORDERED, in accordance with Rule 6(e) of the Federal Rules of Criminal Procedure, that the United States' application for immunity be sealed, except that a certified copy shall be provided to Daniel A. Petalas, Trial Attorney, Public Integrity Section, Criminal Division, U.S. Department of Justice.

DATED this 5th day of October, 2007.


UNITED STATES CIRCUIT JUDGE

Exhibit 3

THE JUDICIAL COUNCIL OF THE FIFTH CIRCUIT

Before: Edith H. Jones, Chief Judge, U. S. Court of Appeals for the Fifth Circuit; Jerry E. Smith, U. S. Circuit Judge; W. Eugene Davis, U. S. Circuit Judge; Jacques L. Wiener, Jr., U. S. Circuit Judge; Rhessa H. Barksdale, U. S. Circuit Judge; Emilio M. Garza, U. S. Circuit Judge; Fortunato P. Benavides, U. S. Circuit Judge; Carl E. Stewart, U. S. Circuit Judge; James L. Dennis, U. S. Circuit Judge; Priscilla R. Owen, U. S. Circuit Judge; Sarah S. Vance, U. S. District Judge; James J. Brady, U. S. District Judge; Tucker L. Melançon, U. S. District Judge; Michael P. Mills, U. S. District Judge; Louis Guirola, Jr., U. S. District Judge; Sam R. Cummings, U. S. District Judge; Hayden Head, U. S. District Judge; Thad Heartfield, U. S. District Judge; Fred Biery, U. S. District Judge

DOCKET NO. 07-05-351-0085

CONFIDENTIAL

IN RE: Complaint of Judicial Misconduct against United States District Judge G. Thomas Porteous, Jr. under the Judicial Conduct and Disability Act of 1980

DENNIS, Circuit Judge, joined by MELANÇON, HEARTFIELD, and BRADY, District Judges, concurring in part and dissenting in part:

1 I agree that this judicial council must publicly
2 reprimand Judge Porteous for legal and ethical misconduct
3 during his tenure as a federal judge. But I disagree with
4 the council majority's conclusion that the evidence
5 demonstrates a possible ground for his impeachment and
6 removal from office.

7 The Framers of the Constitution provided that federal
8 judges, both of the supreme and inferior courts, shall

9 hold their offices during good behavior and shall be
10 removed from office only upon impeachment for, and
11 conviction of, treason, bribery, or other high crimes and
12 misdemeanors; that the House of Representatives shall
13 have the sole power of impeachment; that the Senate shall
14 have the sole power to try all impeachments; and that no
15 person shall be convicted without the concurrence of two
16 thirds of the Senate members present. These requirements
17 make removal by impeachment a difficult process, reserved
18 only for the most egregious cases. Thus, the founders
19 intended for judges to have a high degree of independence
20 and to be removable only upon constitutionally specified
21 grounds; they did not intend for judges to serve simply
22 at the pleasure of a majority of the Congress.

23 Congress has authorized a judicial council to take
24 the initial step towards invoking the impeachment process
25 only when there is a possibility that the foregoing
26 requirements can be met. Accordingly, in fidelity to the
27 Constitution and in the interest of judicial
28 independence, as well as fairness to individual judges,
29 a judicial council should not certify a case for
30 consideration of impeachment unless it has carefully and
31 judiciously weighed the evidence and determined that the
32 judge committed specified acts of possible "Treason,
33 Bribery, or other high Crimes or Misdemeanors." Because
34 the Constitution mandates only this one definition of
35 impeachable conduct, a judicial council may not create
36 its own definition of impeachable offenses, either by

37 aggregating non-impeachable conduct or otherwise.
38 "Treason, Bribery, or other high Crimes and Misdemeanors"
39 are the only grounds.

40 A careful and judicious analysis of the evidence in
41 the present case fails to demonstrate that Judge Porteous
42 committed possible treason, bribery, or a high crime or
43 misdemeanor. As an initial matter, it is undisputed that
44 the evidence does not support a finding of any
45 possibility that Judge Porteous committed treason or
46 bribery. Further, the evidence does not support a
47 finding that Judge Porteous committed a possible high
48 crime or high misdemeanor as the terms have been
49 understood by the Framers and ratifiers of the
50 Constitution and by the members of Congress. The
51 constitutional convention proceedings, the ratification
52 history, and the congressional precedents demonstrate
53 that finding a high crime or high misdemeanor requires a
54 showing that the subject judge abused or violated the
55 constitutional judicial power entrusted to him. The
56 evidence here does not support a finding that Judge
57 Porteous possibly abused or violated the federal
58 constitutional judicial power entrusted to him. Instead,
59 the evidence shows that in one case he allowed the
60 appearances of serious improprieties but that he did not
61 commit an actual abuse or violation of the constitutional
62 power entrusted to him. The other offenses and
63 improprieties alleged against Judge Porteous relate to
64 his actions and omissions as a private citizen and his

65 failure to accurately disclose personal financial data.
66 None of these alleged improprieties amount to an abuse or
67 violation of constitutional judicial powers.

68 Moreover, neither the special investigating committee
69 nor the judicial council majority performed the difficult
70 tasks of making a careful, judicious analysis of the
71 evidence, determining the definition of "high Crimes and
72 [high] Misdemeanors," applying that constitutional
73 concept to the evidence, and making specific findings
74 that particular acts or omissions by Judge Porteous
75 possibly constituted such impeachable offenses.
76 Consequently, neither the committee nor the council
77 majority actually made a principled determination that
78 any particular act or omission by Judge Porteous
79 constituted a possible high crime or misdemeanor.
80 Instead, the special investigating committee presented a
81 report setting forth, in the manner of a charging
82 document or prosecutorial brief, each ethical and
83 statutory violation that it thought the evidence possibly
84 supported and concluded, without making the
85 constitutional interpretation and analysis called for,
86 that the record might contain one or more grounds for
87 possible impeachment. The judicial council majority, in
88 its Memorandum Order and Certification, simply summarized
89 the special committee report's allegations and findings,
90 determined that there was "substantial evidence" to
91 support them, and determined, without making its own
92 written analysis of the evidence or applying the

93 constitutional test of high crime or high misdemeanor,
94 that Judge Porteous engaged in conduct which might
95 constitute one or more grounds for impeachment under
96 Article II of the Constitution. Thus, it is evident that
97 the committee and the council majority approved the
98 certification of possible impeachment without reaching an
99 agreement as to what constitutes an impeachable offense
100 or as to which particular high crime or high misdemeanor,
101 if any, was adequately supported by the evidence.
102 Consequently, in my opinion, the council majority fell
103 into error by certifying the existence of possible
104 grounds for impeachment without carefully and judiciously
105 analyzing the evidence, determining the constitutional
106 meaning or definition of "high Crimes and Misdemeanors,"
107 applying that definition to a judicious assessment of the
108 evidence, and making specific findings that particular
109 and certain conduct met the definition of "high Crimes
110 and [high] Misdemeanors," i.e., actual abuses and
111 violations of constitutional judicial powers.

112 Finally, the record in this case does not present a
113 reliable basis upon which to carefully and judiciously
114 assess the evidence of whether specific high crimes or
115 high misdemeanors were possibly committed because Judge
116 Porteous was not afforded all minimal due process rights
117 required by law. Because Judge Porteous's attorney
118 resigned two weeks prior to the special committee hearing
119 and he was denied a continuance to employ new counsel
120 with which to prepare for the hearing, he was denied his

right to counsel in these proceedings. Further, the special investigating committee and judicial council majority determinations were in part based on alleged misconduct by Judge Porteous as a state judge before he was commissioned as a federal judicial officer, which does not constitute grounds for impeachment.

Accordingly, I respectfully suggest that the Judicial Conference should vacate the judicial council majority's order of certification and enter in its place a public reprimand with appropriate precautionary conditions, or, in the alternative, vacate the judicial council's actions and order it to grant Judge Porteous a rehearing and to afford him full rights of minimal due process, including an opportunity to employ an attorney and to adequately prepare for the rehearing.

1.

The Constitution's founders intended for impeachment and removal of a federal officer to be difficult and reserved for the most egregious crimes against the United States, which they named as "Treason, Bribery, or other high Crimes and Misdemeanors." They believed that, if our American system of democracy and justice was to survive, and respect for the rule of law to flourish, judges must be free to interpret and apply the law with neither the fear of retribution nor the influence of favor.¹ The

¹ See H.R. Rep. No. 96-1313, at 2 (1980) (*citing* The Federalist Nos. 78 and 79 (Hamilton 502, 512 (Mod Lib.); Montesquieu, 1 Spirit of the Laws 152 (Nugent ed. 1823)).

founders intended that an independent federal judiciary would serve as a check against unconstitutional conduct by executive and legislative officers and as fair and impartial fora for all litigants.² Thus, they designed the Constitution's clauses to give federal judges maximum freedom from possible coercion or influence by factions or the other branches of government.

Congress reaffirmed these values in enacting the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980, recognizing that the framers meant for impeachment to be used to rectify only the most egregious cases, those that cannot be remedied by any other means.³ In explaining that Act, which governs these proceedings, the House of Representatives Committee on the Judiciary stated:

Impeachment . . . is the heaviest piece of artillery in the congressional arsenal, but because it is so heavy it is unfit for ordinary use. It is like a hundred-ton gun which needs complex machinery to bring it into position, an enormous charge of powder to fire it, and a large mark to aim at.⁴

² See, e.g., *The Federalist* Nos. 78 and 79 (Alexander Hamilton).

³ *Id.* (citing House Hearings before the Subcommittee on Courts, Civil Liberties and the Administration of Justice, (96th Cong. 1st and 2nd Sess.) at 136 (testimony of Peter W. Rodino, Jr.)).

⁴ H.R. Rep. No. 96-1313, at 2 (1980) (*quoting* J. Bryce, 1 *American Commonwealth* 212 (1920)).

171 Accordingly, Congress provided in the Act⁵ that a judicial
 172 council must certify a complaint against a judge to the
 173 Judicial Conference for consideration of impeachment only
 174 when there is a possibility that a judge has committed
 175 one of the impeachable crimes named by Article II,
 176 section 4, of the Constitution.⁶ In the Act, Congress
 177 anticipated that the vast majority of complaints would be
 178 dismissed by Chief Circuit Judges as frivolous,
 179 irrelevant, or as collateral attacks on final court
 180 decisions;⁷ that a relatively fewer number of complaints
 181 would be referred by the Chief Circuit Judge to a special
 182 committee of the circuit judicial council; and that only
 183 the rare and most egregious case would be certified by
 184 judicial councils to the Judicial Conference for referral
 185 and consideration of possible impeachment.⁸

186 This is not one of those rare and egregious cases
 187 presenting the possibility of an impeachable offense
 188 against the nation. Under a proper application of the
 189 Constitution and the Act, Judge Porteous's misconduct is
 190 serious and clearly warrants his public reprimand, as

⁵ 28 U.S.C. §§ 354 (b)(2).

⁶ "It is the view of the Committee that impeachment is a cumbersome and unwieldy process, but this was not unintentional since the framers of the Constitution expressly attempted to provide independence to the federal judiciary." H.R. Rep. No. 96-1313, at 19 (1980).

⁷ 28 U.S.C. §§ 354 (a)(2)(A); H.R. Rep. No. 96-1313, at 10 (1980).

⁸ See H.R. Rep. No. 96-1313, at 2 (1980) ("Over the past 200 years, articles of impeachment have been voted against nine federal judges, four of whom have been convicted and removed from the bench. An additional 46 federal judges have been investigated by the House of Representatives under accusations of unfitness.") (footnote omitted); see also *id.* at 12 (offering examples of the extreme instances in which certification is proper).

well as his willingness to accept and obey strict precautionary conditions for his continuation in office; but it does not amount to a case of possible treason, bribery, or other high crimes or misdemeanors as those terms have been understood by the founders and Congress as the exclusive grounds for impeachment and removal.

2.

The Constitution limits Congress when it makes a choice for or against impeachment to that very particular class of cases: "Treason, Bribery, or other high Crimes and Misdemeanors."⁹ Similarly, when judges serve as members of a judicial council in making a choice for or against possible impeachment, they, by virtue of their oaths and the enabling statute, have an obligation of fidelity to the fundamental design of the Constitution to limit the possible instrument of impeachment to that same narrow class of cases.¹⁰

Bound by the constitutional impeachment standards, a judicial council does not have authority to create its own definition of impeachable offenses or to consider a cumulation of non-impeachable offenses as grounds for possible impeachment. As the statutory text and the legislative history of the act authorizing this council

⁹U.S. Const. art. II, § 4.

¹⁰See Frank O. Bowman, III & Stephen L. Sepinuck, "High Crimes & Misdemeanors": *Defining the Constitutional Limits on Presidential Impeachment*, 72 S. Cal. L. Rev. 1517, 1519-20 & n.5 (1999) ("Bowman & Sepinuck").

215 make clear, judicial councils may not alter or interfere
 216 with the constitutionally defined impeachment process.¹¹
 217 Rather, the concept underlying the act was to allow the
 218 judicial council to deal with matters falling short of
 219 impeachment but that could affect the administration of
 220 justice.¹² Therefore, Congress did not authorize judicial
 221 councils to create their own definitions of impeachable
 222 offenses or suggest removal for offenses falling short of
 223 the Article II "Treason, Bribery, or other high Crimes
 224 and Misdemeanors" standard.¹³

225 In contravention of these principles, this council

¹¹ See 28 U.S.C. § 354(b)(2)(A) (prompting certification of a complaint to the Judicial Conferences when it "might constitute one or more grounds for *impeachment under article II of the Constitution*") (emphasis added).

The legislative history underlying this act confirms this reading. For example, the Senate report terms the act "a supplement to, but not a substitute for, the seldom used process of impeachment" and states "nor is any effort made to alter or modify the constitutional impeachment process." S. Rep. No. 96-362, at 3-4 (1979). The Senate Report reiterated this limitation, noting that the primary purpose of the act was to "deal with matters which for the most part fall short of being subject to impeachment. And, where impeachment may be appropriate, traditional constitutional procedures continue to govern." *Id.* at 4.

¹² The act intended judicial councils "to deal with those matters which do not rise to the level of impeachable offenses Complaints relating to the conduct of a member of the judiciary which are not connected with the judicial office or which do not affect the administration of justice are without jurisdiction and therefore outside the scope of this legislation." S. Rep. No. 96-362, at 3 (1979). As the Senate report re-emphasized, the act was intended to "deal with matters which for the most part fall short of being subject to impeachment," to "fill in the void which currently exists in the law between the impeachable offenses and doing nothing at all." *Id.* at 4-5. See also *Hastings v. Judicial Conference of U.S.*, 593 F. Supp. 1371, 1382 (D.D.C. 1984).

¹³ *Cf. Hastings v. Judicial Conference of U.S.*, 593 F. Supp. 1371, 1382 (D.D.C. 1984) ("[In light of Congress's expressed intent], this Court holds that Congress therefore did not intend to authorize investigation and formal proceedings against a judge for one or two isolated instances of possibly unethical or inappropriate official conduct unless such conduct, by itself, could amount to an impeachable offense.").

may have overstepped its constitutional and congressionally intended bounds by mistakenly proceeding under the erroneous assumption that it may properly accumulate non-impeachable offenses to find the possibility of impeachment for an aggregate of less serious crimes. Such a practice, though, exceeds the council's congressional authorization and defies the Constitution because it essentially creates an anomalous and eccentric definition of an impeachable offense.¹⁴

To avoid such errors and to evaluate possible impeachable offenses intelligently and constitutionally, members of both Congress and judicial councils must address the difficult problem of ascertaining what qualifies as treason, bribery, and other high crimes and misdemeanors for which a judge may constitutionally be impeached and removed from office.¹⁵ Accordingly, in determining the limits of the constitutional phrase "treason, bribery, or other high crimes and misdemeanors," congressional and judicial council members should generally conform to the historical practice of relying on the same sources courts have consulted in construing other constitutional provisions: the language of the Constitution; the evident intent of the framers and ratifiers; the body of precedent created by prior impeachment proceedings; and the views of scholars and

¹⁴ See *id.*

¹⁵ See U.S. Const. art. II, § 4; 28 U.S.C. § 354(b)(2)(A).

251 other commentators.¹⁶

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The Framers were influenced by the law and practice of England in deciding that "Treason, Bribery, or other high Crimes and Misdemeanors" would be the only offenses for which a federal judge or other constitutional officer could be impeached. In the preceding English experience, impeachable offenses were political crimes, impeachment was a political proceeding, and "high crimes and misdemeanors" was a category of political crimes against the state.¹⁷ Initially in the constitutional convention, Mason proposed to expand the Constitution's definition of impeachable offense by adding the word "maladministration" to follow the words "treason and bribery."¹⁸ Madison objected to this proposal, arguing that "[s]o vague a term [would] be equivalent to a tenure during the pleasure of the Senate."¹⁹ Mason then withdrew "maladministration," substituting instead "other high

¹⁶ See Bowman & Sepinuck, *supra* note 10, at 1521. See also Daniel H. Pollitt, *Sex in the Oval Office and Cover-Up Under Oath: Impeachable Offense?*, 77 N.C. L. Rev. 259, 262 (1998) ("Pollitt"); Michael J. Gerhardt, *The Constitutional Limits to Impeachment and Its Alternatives*, 68 Tex. L. Rev. 1, 9, 41 (1989) ("Constitutional Limits to Impeachment").

¹⁷ See Michael J. Gerhardt, *The Federal Impeachment Process: A Constitutional and Historical Analysis*, 103 (2d ed. 2000) ("The Federal Impeachment Process"); Bowman & Sepinuck, *supra* note 10, at 1529; Pollitt, *supra* note 16, at 265.

¹⁸ See Bowman & Sepinuck, *supra* note 10, at 1524; Pollitt, *supra* note 16, at 265.

¹⁹ Pollitt, *supra* note 16, at 265.

crimes and misdemeanors agst. the State."²⁰ The ratification debates confirm that "other high Crimes and Misdemeanors" include only "great offenses" against the federal government.²¹ Thus, delegates to state ratification conventions often referred to impeachable offenses as "great" offenses and said impeachment should apply if the official "deviates from his duty" or if he "dare to abuse the powers vested in him by the people."²²

Alexander Hamilton similarly observed that:

The subject [of the Senate's] jurisdiction [in an impeachment trial] are those offenses which proceed from the misconduct of public men, or, in other words, from the *abuse or violation of some public trust*. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself.²³

In sum, although the framers and ratifiers of the Constitution saw the need, in extraordinary cases, for a vehicle to remove a president, judge, or other constitutional civil officer, they sought to ensure that those officers would retain a high degree of independence

²⁰ *Id.*

²¹ The Federal Impeachment Process, *supra* note 17, at 104-05; Bowman & Sepinuck, *supra* note 10, at 1530.

²² See Constitutional Limits to Impeachment, *supra* note 16, at 65 & n.378-79 (emphasis added).

²³ *Id.* at 85-86 (citing THE FEDERALIST NO. 65, at 396 (A. Hamilton) (C. Rossiter ed. 1961)).

and not be subjected to removal simply at the pleasure of Congress. Accordingly, they provided for removal of judges and other officers only upon impeachment by the House and conviction by a super-majority of the Senate for a specific class of offenses, "Treason, Bribery, or other high Crimes or Misdemeanors," that include only those political or public crimes which constitute an abuse or violation of the constitutional powers entrusted to the officer.

B.

Congress, when dealing with federal judges, has faithfully restricted its use of the impeachment power to the core of the constitutional impeachable offenses as intended by the framers and ratifiers.²⁴ Accordingly, throughout United States history, a total of twelve federal judges have been impeached, and an analysis of their cases shows that Congress has only voted to impeach in instances of judges abusing their official, constitutional powers.²⁵ Of the twelve judges impeached, only seven have been convicted and removed from office by

²⁴ See Pollitt, *supra* note 16, at 277; The Federal Impeachment Process, *supra* note 17, at xii ("The seven federal officials whom the Senate has convicted and removed — all judges— shared misconduct that caused serious injury to the republic and had a nexus with the official's formal duties."); see also *id.* at 194 ("[I]n over two hundred years Congress has impeached only sixteen officials (including two presidents) but removed only seven judges. Close cases do not produce removals; only compelling ones do."); Pollitt, *supra* note 16, at 267 ("Since 1796, although some sixty or more impeachment proceedings have been filed, the House has voted to impeach only fifteen persons.").

²⁵ See generally, Bowman & Sepinuck, *supra* note 10, at 1566-98; Pollitt, *supra* note 16, at 268-77.

the Senate. Four have been acquitted in Senate hearings,
and one resigned before the Senate could act.²⁶

i.

Judge John Pickering was impeached in 1803 and
convicted by the Senate in 1804 for improper rulings,
drunkenness on the bench, and blasphemy.²⁷ Pickering
allegedly rendered judgment on the merits of a case while
refusing to hear relevant testimony offered by the
attorney general, disregarded and attempted to evade
federal law, and refused to permit an appeal; further, he
appeared on the bench while intoxicated and apparently
suffered from insanity.²⁸

Judge West H. Humphreys was impeached and convicted
by the Senate in 1862 for actions most akin to treason,
i.e., incitement to revolt and rebellion.²⁹ Humphreys
joined the Tennessee secession and served as a District
Court Judge in the Confederate States of America without
retiring from the federal bench; during his impeachment
he made no appearance and offered no defense.³⁰

Judge Robert W. Archbald was impeached in 1912 and
convicted by the Senate in 1913 for bribery, using his

²⁶ See Bowman & Sepinuck, *supra* note 10, at 1566-98.

²⁷ *Id.* at 1567-68.

²⁸ *Id.*; Pollitt, *supra* note 16, at 270.

²⁹ Bowman & Sepinuck, *supra* note 10, at 1571-72.

³⁰ *Id.*; Pollitt, *supra* note 16, at 272.

position as a judge to induce numerous litigants to allow him profitable financial deals, and hearing cases in which he had a financial interest.³¹ In a number of instances, Archbald coerced a railroad company, which had several cases pending before him, and a series of other litigants to sell or lease him and a partner certain profitable property.³² Archbald also received a \$500 bribe in exchange for attempting to induce other litigants to lease profitable property to Archbald's associate.³³

Judge Halstead L. Ritter was impeached and convicted by the Senate in 1936 for creating kickback schemes, continuing to work on a case as a lawyer while already a judge, evading federal income tax, bartering his judicial authority for a vote of confidence, and bringing his court into scandal and disrepute.³⁴ Among his articles of impeachment were findings that he awarded a receivership to a former partner and increased the receivership fees by \$75,000 in return for a \$4,500 kickback, which led to the income-tax evasion because he failed to report the sum.³⁵

Judge Harry Claiborne was impeached and convicted by

³¹ Bowman & Sepinuck, *supra* note 10, at 1581-84.

³² *Id.*

³³ *Id.*

³⁴ *Id.* at 1588.

³⁵ *Id.*; Pollitt, *supra* note 16, at 274-75.

359 the Senate for tax evasion in 1986.³⁶ Prior to his
360 impeachment, Claiborne had been judicially convicted of
361 criminal tax evasion for substantially under-reporting
362 his income in 1979 and 1980; the income he failed to
363 report was profit from bribes.³⁷ He was sent to prison
364 but refused to resign, so he continued to draw his
365 federal salary while serving jail time.³⁸ This apparently
366 prompted his impeachment proceedings.

367 Judge Alcee L. Hastings was impeached in 1988 and
368 convicted by the Senate in 1989 for conspiracy to solicit
369 a bribe and perjury after having been criminally indicted
370 and acquitted for bribery and conspiracy.³⁹ Hastings
371 allegedly attempted to obtain \$150,000 from a defendant
372 in a case before him in exchange for a sentence not
373 requiring jail time and then allegedly lied to a grand
374 jury about the matter.⁴⁰ Though Hastings was acquitted in
375 his criminal trial for bribery and conspiracy, Hastings'
376 alleged co-conspirator was convicted in a separate
377 trial.⁴¹

378 Finally, Judge Walter L. Nixon was impeached and

³⁶ Bowman & Sepinuck, *supra* note 10, at 1590-91.

³⁷ Pollitt, *supra* note 16, at 275.

³⁸ *Id.*; Bowman & Sepinuck, *supra* note 10, at 1590-91.

³⁹ Bowman & Sepinuck, *supra* note 10, at 1591.

⁴⁰ *Id.*

⁴¹ *Id.*

convicted by the Senate for perjury in 1989.⁴² Prior to his impeachment, Nixon had been judicially convicted on federal criminal charges of perjury and was serving a five-year sentence.⁴³ Nixon's perjury conviction arose out of statements he made to a grand jury, which was investigating bribery charges alleging that Nixon accepted a gratuity in exchange for attempting to influence a state's drug prosecution against a business partner's son.⁴⁴ Like Judge Claiborne, Nixon was sentenced to imprisonment and refused to resign, so that he continued to receive federal judicial compensation while in prison, prompting Congress to institute impeachment proceedings.⁴⁵

ii.

Supreme Court Justice Samuel Chase was impeached but acquitted by the Senate in 1804 for bias in charging a grand jury and other action from the bench.⁴⁶ The articles of impeachment against Chase state that he attempted to prejudice juries before defense counsel could be heard, prohibited defense counsel from addressing the jury on the law, seated a juror who had

⁴² *Id.* at 1595.

⁴³ *Id.*

⁴⁴ *Id.*; Pollitt, *supra* note 16, at 276.

⁴⁵ Pollitt, *supra* note 16, at 276.

⁴⁶ Bowman & Sepinuck, *supra* note 10, at 1569-71.

401 already decided that a defendant was guilty, and
402 delivered political speeches from the bench.⁴⁷

403 Judge James H. Peck was impeached 1830 but acquitted
404 by the Senate in 1831 for holding a lawyer who criticized
405 his rulings in contempt.⁴⁸ When a local newspaper printed
406 a letter, written by a lawyer, criticizing one of Peck's
407 rulings, Peck had the lawyer arrested, held him in
408 contempt, ordered him imprisoned for 24 hours, and
409 suspended him from practicing before the court for
410 eighteen months.⁴⁹ The impeachment was based on "[Peck's]
411 unjust, oppressive, and arbitrary contempt order and his
412 general gross abuse of power as a judge," but "the Senate
413 voted not to convict because criminal intent had neither
414 been charged nor proved."⁵⁰

415 Judge Charles H. Swayne was impeached in 1904 but
416 acquitted by the Senate in 1905 for falsifying expense
417 accounts and using property held in receivership.⁵¹ The
418 articles of impeachment alleged three instances of Swayne
419 falsely inflating his travel expenses in an attempt to
420 defraud the federal government into over-paying him; in
421 two separate instances, Swayne also appropriated the use
422 of a railroad car, which was held under receivership, to

⁴⁷ *Id.*

⁴⁸ *Id.* at 1571.

⁴⁹ *Id.*

⁵⁰ Pollitt, *supra* note 16, at 271-72.

⁵¹ Bowman & Sepinuck, *supra* note 10, at 1578-79.

transport himself, his family, and friends from Delaware to Florida and from Florida to California.⁵² Swayne then allowed the receiver to claim these expenses as necessary costs of operating the railroad.⁵³ The Senate ultimately acquitted Swayne, whose "defense was that even if the charges against him were accepted as true, those acts did not satisfy the constitutional definition of high crimes and misdemeanors."⁵⁴

Judge George English was impeached in 1926 for favoritism, improper conduct, and improper use of bankruptcy funds in his court; he resigned before the Senate could take action on the matter.⁵⁵ Among English's articles of impeachment were allegations that he disbarred two lawyers without giving notice, proffering charges, or allowing them to speak in their own defense.⁵⁶ He also allegedly threatened to incarcerate jurors if they did not return guilty verdicts and constructed a fake trial for the purpose of summoning and berating local officials.⁵⁷

Judge Harold Louderback was impeached but acquitted by the Senate in 1933 for using favoritism in appointing

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Pollitt, *supra* note 16, at 273.

⁵⁵ Bowman & Sepinuck, *supra* note 10, at 1585-86.

⁵⁶ *Id.*

⁵⁷ *Id.*

receivers.⁵⁸ The articles of impeachment against Louderback alleged four separate instances of Louderback creating kickback schemes to enrich his friends at litigants' expense; "lacking evidence that Louderback had received any direct personal financial gain from these appointments, however, the Senate voted to acquit him."⁵⁹

iii.

As the examples above demonstrate, Congress has applied the meaning of "high crimes and misdemeanors" by voting to impeach judges only when their alleged conduct has included abuses of constitutionally entrusted powers. Among the judges convicted by the Senate, for example, Judges Nixon's and Claiborne's convictions for perjury to cover up bribery before a grand jury and tax evasion, respectively, demonstrate their abuse of their judicial power. Both also allegedly engaged in bribery, a specifically identified impeachable offense. Similarly, Judge Hastings was alleged to have accepted bribes, and Judge Ritter's kickback schemes and Archbald's financial manipulations, both of which arguably involved bribery, also hinged on their abuse of official judicial power. The allegations that Judge Pickering took the bench while intoxicated, improperly denied an appeal, refused to allow the attorney general to present witnesses' testimony, and arbitrarily entered judgment without

⁵⁸ *Id.* at 1586-87.

⁵⁹ *Id.*; Pollitt, *supra* note 16, at 274.

conducting trial or hearing witnesses similarly implicate abuse of his official judicial duty and power. Finally, Judge Humphreys' actions essentially constituted treason, another specifically identified impeachable offense.

Even for those judges impeached but not convicted by the Senate, the impeachment grounds hinged on abuses of official constitutional powers. Judges Louderback and Swayne, acting in their official federal capacities, allegedly abused the receivership process and, in Swayne's case, attempted to defraud the federal government into over-paying judicial expenses. Judge Peck acted in his official capacity by ordering arrest and contempt charges; and all of the allegations against Justice Chase and Judge English similarly implicate abusive conduct from the bench toward litigants and jurors.

C.

According to the constitutional text, the evident intent of the framers and ratifiers, the body of precedent created by prior judicial impeachment proceedings, and the views of scholars and other commentators, impeachable high crimes and misdemeanors are limited to abuses or violations of constitutional judicial power. Thus, any conduct short of an abuse or violation of constitutionally entrusted power cannot constitute a possible impeachable offense.

3.

499 The special investigating committee and the judicial
500 council majority neither alleged nor found that Judge
501 Porteous had committed treason, bribery, or other high
502 crimes or misdemeanors, or that he had engaged in
503 misconduct which constituted an abuse or violation of
504 constitutional judicial power. The only violations of
505 law or canons of judicial conduct that the committee or
506 the council majority alleged or found Judge Porteous to
507 have committed do not amount to impeachable offenses
508 because they do not amount to an abuse or violation of
509 the constitutional judicial powers entrusted to him.
510 Accordingly, although the misconduct which the committee
511 and council majority attributed to Judge Porteous
512 warrants a public reprimand, it does not constitute any
513 of the constitutional grounds for impeachment, and the
514 council majority therefore erroneously certified this
515 case for possible impeachment.

516 The DOJ as complainant, the special investigatory
517 committee, and the judicial council majority have never
518 alleged that Judge Porteous committed treason or
519 bribery.⁶⁰ In fact, the special committee expressly
520 concedes that there is no allegation of bribery in the
521 complaint or charge against Judge Porteous.⁶¹ Although

⁶⁰ See U.S. Department of Justice Complaint of Judicial Misconduct Concerning the Honorable G. Thomas Porteous, Jr. ("Complaint"); The Special Committee for the Fifth Circuit Judicial Council Charges of Judicial Misconduct; Special Committee Response to Reply Memorandum at 9.

⁶¹ Special Committee Response to Reply Memorandum at 9 ("no specific allegations of bribery appear in the Complaint or in the Charge").

522 the committee introduced evidence of alleged misconduct
 523 by Judge Porteous while he was a state judge, the
 524 committee admitted that it has no authority over such
 525 non-federal judicial conduct.⁶² Furthermore, because the
 526 only constitutional grounds for impeachment of a federal
 527 judge are his commission, while on the federal bench, of
 528 treason, bribery and other high crimes and misdemeanors
 529 against the United States, the Congress lacks
 530 jurisdiction to impeach, and the judicial council lacks
 531 authority to certify for possible impeachment, Judge
 532 Porteous for any misconduct prior to his appointment as
 533 a federal judge.⁶³

⁶² The Special Committee concedes that it has “never taken the position that it has authority over Judge Porteous’s judicial misconduct as a state judge.” Special Committee Response to Reply Memorandum at 4.

⁶³ See The Federal Impeachment Process, *supra* note 17, at 108-09. See also Special Committee Response to Reply Memorandum at 4 (conceding that the committee has “never taken the position that it has authority over Judge Porteous’s judicial misconduct as a state judge.”).

Records of past impeachment proceedings also demonstrate that evidence relating to state-level judicial misconduct falls outside the proper scope of an impeachment inquiry into misconduct as a federal judge. During the Senate conviction proceedings for Judge Archbald in 1913, the Judge’s counsel presented an extensive brief arguing why the last six articles of impeachment should not stand. Counsel argued that because those articles related to Judge Archbald’s tenure as a district court judge and the impeachment concerned his position as a judge on the Commerce Court, the evidence of conduct occurring during Archbald’s district court tenure, *i.e.*, prior to his then-current federal office, was irrelevant and outside the scope of a proper impeachment inquiry. In response, the senate found Archbald “not guilty” for all six articles wholly concerned with his actions during his district court tenure though they convicted Archbald on the other articles.

The argument in Judge Archbald’s case, equally applicable here, revolved around Article I, section 3, of the Constitution, which states “Judgment in the Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States.” As primary legal authority, Judge Archbald’s counsel cited to Justice Story’s Commentaries on the Constitution of the United States, which interprets the relevant clause as follows:

534 Thus, the special committee and council majority
 535 erred in certifying this matter, having found only
 536 non-impeachable offenses but mistakenly averring that
 537 there might be an impeachable offense among them. The
 538 council majority's Memorandum Order and Certification
 539 describes the offenses it found as follows:
 540

As it is declared in one clause of the Constitution, that 'judgment, in cases of impeachment, shall not extend further, than a removal from office, and disqualification to hold any office of honour, trust, or profit, under the United States;' and in another clause, that "the president, vice president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes or misdemeanours;" it would seem to follow, that the Senate, on the conviction, were bound, in all cases, to enter a judgment of removal from office, though it has a discretion, as to inflicting the punishment of disqualification. *If, then, there must be a judgment of removal from office, it would seem to follow, that the Constitution contemplated, that the party was still in office at the time of the impeachment. If he was not, his offence was still liable to be tried and punished in the ordinary tribunals of justice.* And it might be argued with some force, that it would be a vain exercise of authority to try a delinquent for an impeachable offence, when the most important object, for which the remedy was given, was no longer necessary, or attainable. And although a judgment of disqualification might still be pronounced, the language of the Constitution may create some doubt, whether it can be pronounced without being coupled with a removal from office. There is also much force in the remark, that an impeachment is a proceeding purely of a political nature. It is not so much designed to punish an offender, as to secure the state against gross official misdemeanors. It touches neither his person, nor his property; but simply divests of his political capacity.

Story, Commentaries on the Constitution § 801 (1833) (emphasis added).

Since Judge Porteous is no longer a state court judge, it is up to the "tribunals of justice" to hold Judge Porteous liable for his actions in that capacity-- which they have not. The scope of the current impeachment inquiry only pertains to Judge Porteous's actions consonant to the remedy at issue-- removal of Judge Porteous from his current federal judicial capacity for abuse of constitutional power related to his current position-- not to actions taken while in state-level positions he no longer holds.

(a) Porteous filed numerous false statements under oath during his and his wife's Chapter 13 bankruptcy, including filing the petition under a false name; concealing assets of the bankruptcy estate; failing to identify gambling losses; and failing to list all creditors. Porteous additionally violated bankruptcy court orders forbidding him from incurring debt during the course of the Chapter 13 case without approval of the trustee or bankruptcy judge, in that he continued regularly to incur short-term extensions of credit from various casinos. Porteous additionally made unauthorized and undisclosed payments to preferred creditors after the commencement of the bankruptcy case.

(b) Porteous engaged in fraudulent and deceptive conduct concerning the debt he owed to Regions Bank prior to bankruptcy.

(c) Porteous received gifts and things of value from attorneys who had cases pending before him. During one particular case (*Liljeberg*), Porteous was requested to recuse from the case but instead ruled against the movant without disclosing to any party his history of financial relationships with at least one counsel in the case.

(d) Porteous's financial disclosure statements for the years 1994-2000 are inaccurate and misleading insofar as they fail to report the gifts and things of value he received from attorneys, and in the year 2000 failed to report accurately significant amounts of reportable indebtedness owed by Judge Porteous.

None of these offenses or ethical violations constitutes a high crime or other impeachable offense because none represents an abuse or violation of constitutional judicial power.

582 A. Appearances of Improprieties in Connection with the
 583 *Liljeberg* Case

584 In essence, the judicial council majority finds that
 585 Judge Porteous committed several serious appearances of
 586 improprieties under the Code of Conduct. I agree with
 587 that finding and think that Judge Porteous should be
 588 given the most severe sanction at the council's disposal
 589 for these infractions, a public reprimand. I emphatically
 590 disagree with the council majority, however, if, without
 591 specifically finding or saying so, it believes that these
 592 appearances of improprieties are high crimes or
 593 misdemeanors.

594 Judge Porteous presided over the *Liljeberg* case, in
 595 which Judge Porteous's long-time friends Amato, Levenson,
 596 and Gardner represented opposing parties.⁶⁴ Arising out
 597 of these circumstances, the judicial council found
 598 several appearance-of-impropriety violations of the Code
 599 of Conduct: first the council found that, before Gardner

⁶⁴Though the special committee report mentions Levenson, he is not the primary focus of the allegations because his role in the appearances of improprieties during the *Liljeberg* case is less significant than those of Amato, Creely, or Gardner. The special committee report notes that Levenson paid for some expenses related to one of Judge Porteous's son's externships in Washington, D.C. prior to the *Liljeberg* case and also often took Judge Porteous out to lunch and paid for the meals. Special Committee Report at 60. Such conduct appears fitting with Judge Porteous's and Levenson's relationship because, like Amato, Creely, and Gardner, Levenson is also a long-time friend of Judge Porteous's. Levenson Grand Jury Testimony at 6-8.

At the outset of their relationship, Levenson treated Judge Porteous to lunch, which Levenson testified was often the case in social relationships between judges and lawyers, and this practice continued when Judge Porteous became a federal judge. *Id.* at 11-12. Levenson testified that though he paid for lunches during the pendency of the *Liljeberg* case, he never did so during the actual trial. *Id.* at 44. Furthermore, Levenson testified that his payment of expenses for Judge Porteous's son was a "long time ago," hence before, and unrelated to, the *Liljeberg* case, and amounted to "a couple of hundred dollars." *Id.* at 65-6.

600 entered the case as an attorney, Judge Porteous declined
601 to either recuse himself or disclose to the parties the
602 closeness of his thirty-year friendships with Amato and
603 Levenson, and second the council found that during the
604 pendency of *Liljeberg*, Judge Porteous received financial
605 assistance from Amato and Amato's partner Creely, another
606 long-time friend, to help pay for his son's wedding and
607 also attended his son's bachelor party in Las Vegas with
608 Gardner and Creely, among a score of other guests, where
609 Creely paid for his hotel room.

610 In the absence of Judge Porteous's and his lawyer
611 friends' involvement in the *Liljeberg* case, of course,
612 there would have been nothing wrong with his receiving
613 gifts from them in connection with his son's wedding.
614 This would have been the natural result of their 30 year
615 relationship during which their families regularly
616 celebrated such occasions together.⁶⁵ But because of the
617 serious appearance of impropriety that these gifts
618 presented in light of *Liljeberg*, Judge Porteous should
619 have avoided the situation entirely by recusal or
620 disclosure.

621 Thus, because of the intersection between the close

⁶⁵ Judge Porteous, Amato, Gardner, and Creely have been close friends for over 30 years. See Special Committee Hearing Transcript ("SCHT") at 461. Amato, Creely, and Judge Porteous met as young lawyers practicing together. See SCHAT at 198, 236-37. All four frequently enjoyed such diversions as hunting, fishing, or having lunch together. See SCHAT at 229. Over time their families also became close. See SCHAT at 259. They attend each others' various parties, birthdays, weddings, and other events. See SCHAT at 154. In fact, Judge Porteous is godfather to one of Gardner's daughters. See SCHAT at 154. In connection with this social interchange, they engaged in the customary mutual benevolence of reciprocal gift-giving and funding of costs of celebrations and social events. See SCHAT at 461-62.

622 friendships, the *Liljeberg* case, and Judge Porteous's
 623 son's wedding, Judge Porteous's failure to take
 624 corrective action resulted in serious appearance-of-
 625 impropriety ethical violations. However, because all of
 626 the sworn testimony indicates without dispute that Judge
 627 Porteous did not commit bribery, i.e., he did not solicit
 628 or accept any private favor or benefit in exchange for
 629 official action, Judge Porteous's ethical infractions
 630 during the *Liljeberg* case did not amount to a high crime
 631 or high misdemeanor because he did not abuse or violate
 632 the constitutional judicial power entrusted to him.
 633 Further, because Judge Porteous created only appearances
 634 of improprieties, his misconduct was not as serious as
 635 actual ethical improprieties under the Code.⁶⁶

⁶⁶ The creation of an appearance of impropriety is distinguishable from an actual impropriety or actual misconduct under the Code of Conduct for United States Judges. As the Commentary to Canon 2A notes, "actual improprieties . . . include violations of law, court rules, or other specific provisions of this code," whereas "the test for appearance of impropriety is whether the conduct would create in reasonable minds . . . a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired."

Here, there is no evidence, allegation, or finding that Judge Porteous violated a law or court rule through his actions during the *Liljeberg* case because there is no evidence or allegation that Judge Porteous's relationship with lawyers on either side of the case influenced his impartial judgment or disposition in the matter. Further, in light of this lack of evidence of bribery or other actual bias during *Liljeberg*, the only canonical violations alleged against Judge Porteous, violations of Canons 1, 2, 3, 5, and 6, are necessarily limited to his creating only an appearance of partiality. Thus, his failure to recuse or disclose his relationship constitutes a mere appearance of impropriety rather than actual impropriety under the canons.

As evidenced by the remedies often awarded to litigants, a Judge's appearance of impropriety is less serious than an actual impropriety. For example, a finding that a judge failed to recuse for an actual impropriety generally requires the remedy of vacatur, whereas a finding of failure to recuse for appearance of impropriety often calls only for prospective recusal. See *In re Cargill, Inc.*, 66 F.3d 1256, 1264 (1st Cir. 1995) (holding that an appearance of impropriety does not require immediate relief whereas actual impropriety would); *In re Allied-Signal Inc.*, 891 F.2d 967, 973 (1st Cir. 1989) (reasoning that because no actual impropriety was alleged, retroactive relief was unnecessary in a case of appearance of impropriety); *U.S. v. Widgery*, 778 F.2d 325, 328 (7th Cir. 1985) ("Disqualification for the appearance of impropriety runs

636 Equally important here, Congress's impeachment
 637 precedents demonstrate that Judge Porteous's *Liljeberg*
 638 conduct falls far short of impeachable crimes under the
 639 Constitution. The congressional impeachments of Judges
 640 Nixon, Hastings, Claiborne, Archbald, and Humphreys, for
 641 example, resulted in their removal for treason and
 642 bribery. Judge Porteous engaged in no treason or bribery
 643 at anytime, either in connection with *Liljeberg* or
 644 otherwise.⁶⁷ Also unlike the cases of Judges Ritter,
 645 Louderback, and Swayne, no evidence here suggests that
 646 the gifts Judge Porteous received during *Liljeberg*
 647 constituted a quid pro quo for official action or in any
 648 way connected to his official powers.

649 During the pendency of *Liljeberg*, Judge Porteous
 650 accepted gifts from Creely and Amato to defray his adult
 651 son's wedding expenses and attended his son's bachelor
 652 party with Creely and Gardner, and both of these
 653 instances fit within the context of their extensive
 654 social relationships and had nothing to do with the
 655 *Liljeberg* case. Thus, the difference between Judge
 656 Porteous's conduct during *Liljeberg* and the impeachable
 657 conduct of Ritter, Archbald, Louderback, and Swayne, is
 658 that all the impeached judges' conduct involved abuses of

prospectively only; even a successful motion does not vitiate acts taken before the motion was filed Disqualification under . . . for an actual impropriety would indeed require a new hearing") (internal citation omitted).

As such, the appearance of an impropriety is deserving of a lesser sanction, if any, than an actual impropriety or actual misconduct.

⁶⁷ See Special Committee Response to Reply Memorandum at 9 ("no specific allegations of bribery appear in the Complaint or in the Charge").

659 official power, viz., awarding receiverships, using
 660 property in receivership, accepting bribes, influencing
 661 litigants' financial decisions, and falsifying expense
 662 accounts,⁶⁸ whereas it is undisputed that Judge Porteous
 663 never acted out of fear or favor of any litigant or
 664 attorney and never abused or violated the constitutional
 665 power entrusted to him.⁶⁹ Finally, the violations alleged
 666 against the impeached judges spanned multiple cases,
 667 whereas the committee and council's allegations against
 668 Judge Porteous center on only the *Liljeberg* case.

669 Furthermore, the special committee and council
 670 majority do not dispute, but, in effect, concede that
 671 Judge Porteous's conduct amounted only to a non-
 672 impeachable appearance of impropriety. They never find
 673 that Judge Porteous's conduct constituted an actual
 674 impropriety, much less an abuse or violation of official
 675 constitutional judicial power. The special investigating
 676 committee's report finds that none of Judge Porteous's
 677 ethical violations was more egregious than his conduct

⁶⁸ Judges Ritter and Louderback allegedly concocted numerous kickback schemes across many cases, Judge Archbald wielded his office for financial advantage against a number of litigants throughout his docket, and Judge Swayne attempted to swindle the federal government on at least three different occasions and commandeered a railroad car in receivership for two different trips.

⁶⁹ In rebutted testimony, 1) Judge Porteous stated that he has "been fair and impartial in every proceeding [before him]," SCHAT at 157; 2) Creely stated that he never thought that his gifts to Judge Porteous would influence his decision in *Liljeberg* or any other case and that he did not believe Judge Porteous's rulings to rely "one way or the other" on these gifts, SCHAT at 229, 231; and 3) Amato testified that there was no quid pro quo or expectation of judgment tied to his gifts to Judge Porteous, SCHAT at 256, and that any money given to Judge Porteous was "because we're friends and we've been friends for 35 years," rather than because Judge Porteous is a judge or to influence his decisions. SCHAT at 258-59.

678 during the *Liljeberg* case but concludes 1) that Judge
679 Porteous should have advised the parties of his financial
680 relationship with Amato and the Creely & Amato law firm
681 as soon as the recusal motion was filed; and 2) that
682 Judge Porteous should have granted the motion to recuse
683 or given the parties the choice of keeping him as a trial
684 judge. The committee further found that Judge Porteous's
685 asking for and receiving Amato's and Creely's financial
686 assistance with his son's wedding and allowing Creely to
687 pay for his hotel room in connection with his son's
688 bachelor party compounded the appearances of
689 improprieties. But the committee correctly did not find
690 that anything other than appearances of improprieties,
691 rather than actual improprieties,⁷⁰ resulted from this
692 conduct under the Code. Thus, the committee found that
693 the failure to recuse, Judge Porteous's worst ethical
694 offense, was not an irremediable actual impropriety under
695 the Code but rather an appearance of impropriety, which,
696 if disclosed, the parties could have cured by agreement.
697 The appearances of serious improprieties allowed by Judge
698 Porteous warrant the most severe sanction that the
699 judicial council can impose, a public reprimand, but
700 because Judge Porteous did not commit an actual abuse or
701 violation of the constitutional judicial power entrusted
702 to him, he did not commit a high crime or high
703 misdemeanor for which he may be impeached and removed
704 from office.

⁷⁰ See *supra* note 66.

705 B. Offenses Related to Personal Bankruptcy, Personal
 706 Bank Loan, and Personal Financial Disclosure
 707 The committee's and council majority's findings that
 708 Judge Porteous violated criminal statutes relating to his
 709 bankruptcy, bank loan, and financial disclosure
 710 statements do not constitute findings of possible
 711 impeachable offenses, because, rather than constituting
 712 the exercise of the constitutional judicial power
 713 entrusted to Judge Porteous, his misconduct in these
 714 respects was restricted to private conduct and reporting
 715 of private financial affairs.⁷¹ These alleged crimes
 716 implicate no bribery or treason on Judge Porteous's part.
 717 Moreover, they involve neither Judge Porteous's actions
 718 from the bench nor any litigants or lawyers involved in
 719 cases before Judge Porteous. So, unlike the conduct
 720 underlying the charges against every federal judge ever
 721 impeached, Judge Porteous's conduct in his bankruptcy,
 722 bank loan, and financial disclosure statements neither
 723 depended upon nor utilized his constitutionally entrusted
 724 powers. In sum, these offenses involve only Judge
 725 Porteous the private citizen and disclosure of his

⁷¹ In *Duplantier v. United States*, 606 F.2d 654 (5th Cir. 1979), the Fifth Circuit examined the statutory financial disclosure obligations that Judge Porteous allegedly violated. The disclosure obligation entails filing a "personal financial report," *id.* at 659 and its statutory intent was to require judges to report for public disclosure judges' *private* financial interests, *id.* at 668 n.30. In *Duplantier*, The Fifth Circuit concluded: "Judges should not be harassed in the legitimate exercise of their duties, and we should tread softly before imposing publicity on their *private financial affairs* which may be a serious threat to judicial independence and may erode that independence so necessary to the proper functioning of the judiciary. Federal judges may properly inquire what necessity brought about the provisions of the Act of Congress which will cause many of their intimate personal and confidential financial affairs to be open to public inspection." *Id.* at 672.

private wealth and financial affairs, not Judge Porteous's use or abuse of constitutional judicial power. As such, because these allegations entail no abuse of official constitutional power, these alleged offenses involving personal, private conduct generically and categorically fall outside the scope of impeachable offenses.

4.

For the foregoing reasons, a detailed examination of the evidence may be unnecessary to a determination that this case does not present a possible treason, bribery, high crime or misdemeanor, or an abuse or violation of constitutional judicial power. Nevertheless, every judge participating in deciding whether to refer this or any case to the House of Representatives for consideration of possible impeachment will wish to have a good understanding of the evidence and record in the case. Accordingly, in the interest of aiding other judges in reviewing and evaluating the evidence, I respectfully suggest that a fair and impartial assessment of the evidence reveals that the case against Judge Porteous, while still warranting a public reprimand, is not as formidable as the committee report represents for many of the same reasons that the DOJ or the grand jury, or both, decided that a criminal prosecution of Judge Porteous was not warranted.

The Federal Bureau of Investigation ("FBI") and a grand jury empaneled in the Eastern District of Louisiana

755 spent nearly five years investigating Judge Porteous in
756 connection with a number of potential criminal charges.⁷²
757 Specifically, the FBI investigated Judge Porteous for
758 conspiracy to bribe a public official in violation of 18
759 U.S.C. §§ 201 and 371, commission or conspiracy to commit
760 honest services mail- or wire-fraud in violation of 18
761 U.S.C. §§ 371, 1341, 1343, and 1346, submission of false
762 statements to federal agencies and banks in violation of
763 18 U.S.C. §§ 1001 and 1014, and filing false
764 declarations, concealing assets, and acting in criminal
765 contempt of court during his personal bankruptcy action
766 in violation of 18 U.S.C. §§ 152 and 401.⁷³

767 After this extensive investigation, the DOJ decided
768 to press no criminal charges against Judge Porteous based
769 both on statute of limitations bars to certain charges
770 and on determination that the government could not meet
771 its burden of proof for the non-barred charges.⁷⁴ It is
772 unclear whether the DOJ decided not to continue or the
773 grand jury returned submitted charges without an
774 indictment. The DOJ specifically said "the government's
775 heavy burden of proof in a criminal trial, and the
776 obligation to carry that burden to a unanimous jury;
777 concerns about the materiality of some of Judge
778 Porteous's provably false statements; the special
779 difficulties in proving mens rea and intent to deceive

⁷² Complaint at 1.

⁷³ *Id.* at 1-2.

⁷⁴ *Id.*

beyond a reasonable doubt in a case of this nature" led to a decision not to prosecute.

The same evidence presented to the grand jury was before the judicial council, and considered under any reasonable standard of proof,⁷⁵ it still arguably cannot support a conclusion that Judge Porteous should be held responsible for the alleged criminal offenses to the extent claimed by the committee because the record cannot support an essential element of the criminal allegations, viz., intent to deceive or defraud, save for the least serious offense which does not require proof of this element. The Complaint alleges, and the Special Committee agreed, that the pertinent allegations of criminal offenses are violations of 18 U.S.C. § 1621, perjury; § 152, bankruptcy fraud; § 1001, false statements to federal agencies; § 1014, false statements to a financial institution; § 1344, bank fraud; and § 371, conspiracy.

To prove a violation of 18 U.S.C. §§ 1621, 152, or 1344 requires proof of a specific intent to defraud; and 18 U.S.C. § 1014 requires proof of a specific intent to influence the bank.⁷⁶ "The requisite intent to defraud is

⁷⁵ Another problem in the Special Committee's treatment of the allegations is the failure to identify the standard of proof required to substantiate these allegations. As noted earlier, the DOJ concedes these allegations probably can not be proved beyond a reasonable doubt.

⁷⁶ For perjury under § 1621(2), "in order to constitute perjury, a false statement must be made with criminal intent, that is, with intent to deceive, and must be wilfully, deliberately, knowingly and corruptly false." *Beckanstin v. United States*, 232 F.2d 1, 4 (5th Cir. 1956). For bankruptcy fraud under § 152, according to the Fifth Circuit pattern jury instructions, to convict under Section 152(1), the Government must prove: (1) "That there existed a proceeding in bankruptcy"; (2) "That certain property or assets belonged to the bankrupt estate"; (3) "That defendant concealed such property from the creditors [custodian] [trustee] [marshal] [some person] charged with control or custody of such property"; and (4) "That the defendant *did so*

established if the defendant acted knowingly and with the specific intent to deceive, ordinarily for the purpose of causing some financial loss to another or bringing about some financial gain to himself.”⁷⁷ As I discuss in the balance of this section, the record evidence forms an arguably insufficient foundation for the conclusion that Judge Porteous harbored the requisite specific intent for the aforementioned alleged criminal offenses.

The Special Committee finds a violation of 18 U.S.C. § 1621(2), the general perjury statute, because Judge Porteous submitted a bankruptcy petition using an alias (“Orteous”) as suggested by his attorney to avoid negative publicity. However, the record shows that Judge Porteous and his attorney intended to correct the name soon after the petition was filed and, in fact, did correct it just twenty days later. Since (1) Judge Porteous relied on his lawyer’s advice⁷⁸ and (2) corrected

knowingly and fraudulently.” (emphasis added); see *United States v. Maturin*, 488 F.3d 657, 662 n.3 (5th Cir. 2007). For bank fraud under 18 U.S.C. § 1344, the prosecution must show beyond a reasonable doubt that the defendant (1) engaged in a scheme or artifice to defraud, or made false statements or misrepresentations to obtain money from; (2) a federally insured financial institution; and (3) *did so knowingly*. *United States v. Brandon*, 17 F.3d 409, 424 (1st Cir. 1994). For § 1014, “the only specific intent that matters for purposes of § 1014 is the intent to influence the bank’s actions.” *United States v. Sparks*, 67 F.3d 1145, 1152 (4th Cir. 1995).

The last alleged infraction, § 1001, false statement to a federal agency, does not require an “intent to defraud.” While Section 1001 proscribes only deliberate, knowing, willful false statements,” it “does not require an intent to defraud—that is, the intent to deprive someone of something by means of deceit.” *United States v. Lichenstein*, 610 F.2d 1272, 1276-77 (5th Cir. 1980).

⁷⁷ *United States v. Doke*, 171 F.3d 240, 243 (5th Cir. 1999).

⁷⁸ Generally, a debtor is entitled to rely on the advice of his bankruptcy counsel where the reliance is reasonable and in good faith. See *Hibernia Nat’l Bank v. Perez*, 124 B.R. 704, 710-11 (E.D. La. 1991), *aff’d* 954 F.2d 1026 (5th Cir. 1992); see also *First Beverly Bank v. Adeeb* (*In re*

the name within twenty days,⁷⁹ arguably a neutral finder of fact could follow our criminal law precedents and infer a lack of bad faith or no intent to defraud.⁸⁰

Judge Porteous's assertion of a good-faith belief in his conduct, and thus a lack of intent to defraud, also tends to weaken the evidentiary basis for the other allegations of fraud relating to his bankruptcy. In fact, no direct evidence of intent to defraud, a necessary element for the bankruptcy fraud allegation under 18 U.S.C. § 152, rebuts the testimony about Judge Porteous's "good-faith."

For example, the record arguably contravenes a finding of intent to defraud for the allegation that Judge Porteous improperly obtained credit during his bankruptcy by using gambling markers and intentionally concealed this credit from his bankruptcy proceedings.

Adeeb), 787 F.2d 1339, 1343 (9th Cir. 1986) (noting that reasonable and good faith reliance on advice of counsel sufficient to show debtor lacked requisite fraudulent intent to revoke or deny discharge); *Beckenstein v. United States*, 232 F.2d 1, 4 (5th Cir. 1956) ("The advice of counsel is also important in determining whether appellant made the statement with a corrupt motive.").

The Special Committee attempts to strip Judge Porteous of this defense by declaring "a federal judge cannot reasonably avail himself of such a defense," Special Committee Report at 18, but this statement appears contrary to the Code of Conduct for United States Judges. According to the Commentary to Canon 5C of the Code of Conduct for United States Judges, "[a] judge has the rights of an ordinary citizen with respect to financial affairs," which arguably includes the right to rely on bankruptcy counsel when such reliance is reasonable and in good faith.

⁷⁹ "Recantation may have a bearing on whether an accused perjurer intended to commit the crime." *United States v. McAfee*, 8 F.3d 1010, 1017 (5th Cir. 1993) (internal citations omitted).

⁸⁰ Further evidence of a lack of bad faith may be inferred from the facts that Judge Porteous's bankruptcy was completed, all creditors were paid a percentage of their claims, and no creditor opposed Judge Porteous's discharge from bankruptcy. See Porteous Hearing Exhibit 1 part 1, Bates No. SC00009-10, SC00015.

834 The FBI agents noted in their testimony that the casino
835 records involving markers are "very confusing" and
836 "there's certain nuances to each casino,"⁸¹ so good faith
837 disagreement or confusion over the financial definition
838 of a marker seems possible. Judge Porteous testified
839 that he understood casino markers as equivalent to
840 checks, which could be held by a casino for as much as 10
841 to 30 days before being presented for payment, and not
842 "credit" in the sense intended by the bankruptcy court
843 order. Under Louisiana commercial law, markers are
844 considered "checks" as defined by Louisiana statute.⁸²
845 Whether each marker was, under the varying underlying
846 circumstances, an actual extension of credit is
847 debatable; thus, whether Judge Porteous knew or should
848 have known each marker was a forbidden extension of
849 credit within the intention of the court's order is also
850 debatable. Based on the complexity of the marker system,
851 the varying circumstances, and the opportunity for
852 misunderstanding, the evidence may support an inference
853 that Judge Porteous did not knowingly incur credit or
854 intend to deceive the bankruptcy court.

855 As for Mrs. Porteous's use of the Fleet credit card
856 to charge around \$1,100 during bankruptcy, Judge

⁸¹ SCHAT at 296.

⁸² *TeleRecovery of Louisiana, Inc. v. Gaulon*, 738 So.2d 662, 667 (La. Ct. App. 1999). I do not suggest that "markers" are necessarily treated as checks and not loans in the bankruptcy context, see *In re Armstrong*, 291 F.3d 517, 523 (8th Cir. 2002), however legal authority for the position that markers should be considered "checks" (even if not in the bankruptcy context) is some support for a good-faith understanding that "markers" would be treated as checks and not credit in the bankruptcy context within Louisiana and the Fifth Circuit.

857 Porteous's testimony of his ignorance arguably
858 demonstrates a lack of intent to defraud. Judge Porteous,
859 in unrebutted testimony, stated that "my understanding
860 was all the cards were torn up. I did not know she had
861 kept that card active until well after the fact."⁸³ It is
862 undisputed that Judge Porteous relied heavily upon Mrs.
863 Porteous, who is now deceased, and his secretary to
864 handle his personal bank accounts, credit cards, and
865 personal financial affairs.

866 Similarly, regarding the failure to disclose assets,
867 Judge Porteous repeatedly noted that he did not fully
868 understand his financial status, and therefore never
869 knowingly misrepresented his bank accounts. First,
870 explaining his non-disclosure of less than \$900 total in
871 various accounts, Judge Porteous stated, "[i]t was just
872 inadvertence, not any intent to hide my finances."⁸⁴ Other
873 factors corroborate that Judge Porteous was not fully
874 aware of his financial situation; his wife handled their
875 bank accounts and his secretary often paid his bills from
876 her personal account before seeking reimbursement from
877 him. Second, Judge Porteous testified that his failure
878 to report a tax refund of \$4143.72, like his use of an
879 alias, was in reliance on the advice of his attorney.⁸⁵

⁸³ SCHAT at 161.

⁸⁴ SCHAT at 158. Judge Porteous's non-disclosure of \$900 in assets arises out of his representation that a bank account was valued at \$100 when it actually contained \$559.07, Special Committee Report at 25, and his failure to disclose a Fidelity money market account containing a balance somewhere between \$283.42 and \$320.29. Special Committee Report at 25.

⁸⁵ SCHAT at 84.

880 Judge Porteous testified that this omission, done on the
 881 advice of his attorney, was "no intentional act to try
 882 and defraud somebody. It just got omitted. I don't know
 883 why."⁸⁶ His attorney could not recall giving advice on
 884 this subject, but his testimony indirectly supports Judge
 885 Porteous's contentions. His attorney, in response to a
 886 question about his standard practice under these
 887 circumstances, stated that "at the time [of Judge
 888 Porteous's bankruptcy] . . . [as part of my standard
 889 practice,] it was not included in the confirmation order
 890 that the debtor turn over either tax returns or tax
 891 refunds from year to year as the plan progresses."⁸⁷

892 The same lack of evidence regarding specific intent
 893 also applies to allegations of submitting false
 894 statements to Regions bank and bank fraud regarding the
 895 renewal of a \$5,000 signature loan.⁸⁸ Judge Porteous made
 896 two statements: (1) that he was not "in the process of
 897 filing bankruptcy" and (2) that there had been no
 898 "material adverse change in [his] financial condition as
 899 disclosed in [his] most recent financial statement to
 900 lender" (emphasis added). In both of these statements,
 901 Judge Porteous arguably did not intend to defraud or
 902 influence the bank because, in unrebutted testimony, he

⁸⁶ SCHAT at 84.

⁸⁷ SCHAT at 438.

⁸⁸ Alleged against Judge Porteous are violations of both 18 U.S.C. § 1014, false statements to a financial institution, and 18 U.S.C. § 1344, bank fraud; the evidence is insufficient to support these charges' respective specific intent requirements, *i.e.*, the evidence does not support a finding of specific intent to influence the bank or specific intent to defraud.

903 testified that he actually believed the two statements
 904 were true when he filed the renewal form with the bank,
 905 and the record tends to supports this "good-faith"
 906 assertion. The loan renewal form was completed "a couple
 907 of months before [he filed] bankruptcy,"⁸⁹ during a period
 908 when Judge Porteous and his lawyer were actively pursuing
 909 a work-out with debtors, *so as to avoid bankruptcy*.
 910 Judge Porteous testified: "I didn't mean [the statement]
 911 to be false, because I wasn't in the process of declaring
 912 - I was doing everything I could not to file a
 913 bankruptcy. That's why I attempted for so long to do a
 914 workout."⁹⁰ There is evidence and legal authority
 915 establishing Judge Porteous's correct understanding that
 916 the work-out is an alternative to avoid bankruptcy.⁹¹

917 Similarly, Judge Porteous's statement to Regions Bank
 918 that there was "no material adverse change" to his
 919 financial status as disclosed by financial statements
 920 also appears to have been true; though his finances were

⁸⁹ SCHAT at 108.

⁹⁰ SCHAT at 109.

⁹¹ In fact, the very "workout" letter that the Special Committee points to as evidence of Judge Porteous's intent to file bankruptcy specifically stated that it was an attempt to "workout of the debts . . . by settlement and release *as opposed to the filing of bankruptcy*." SCHAT at 280 (emphasis added). The very purpose of a "work-out" agreement is for use outside bankruptcy. See *In re Colonial Ford, Inc.*, 24 B.R. 1014 (Bankr. Utah 1982) ("Congress designed the Code, in large measure, to encourage workouts in the first instance, with refuge in bankruptcy as a last resort."); see also *In re Pengo Indus., Inc.*, 962 F.2d 543, 549 (5th Cir. 1992) ("We strongly disfavor a judicial interpretation of the Bankruptcy Code that contravenes the substantial congressional policy favoring out-of-court consensual workouts."). The testimony of Judge Porteous's bankruptcy attorney, Lightfoot, corroborates Judge Porteous's: "we first started on a workout proposal . . . hoping to avoid bankruptcy" by looking into leveraging home equity and other possible strategies. SCHAT at 433-34.

921 in poor shape at the time he renewed the loan, the same
922 was true at the time he initially sought the loan.
923 Therefore, he may not have believed his financial
924 condition was any worse in respect to his ability to
925 repay a \$5000 bank loan than it was a year before when
926 the loan was first made. Moreover, his statement appears
927 to have been literally true; the financial statement
928 forms were never filled out in the initial loan
929 application or in the renewal application. He was only
930 obliged to provide financial statements "as Lender may
931 reasonably request," and there is no evidence showing the
932 Lender so requested. Thus, no material change was
933 technically reflected in the financial condition
934 information *as disclosed* to the Lender, since both
935 initial and renewal applications contained identical
936 blank financial statement forms.

937 In respect to each of these criminal allegations
938 above, the evidence permits and supports the argument
939 that the record lacks evidence to support these
940 allegations on a critical element: evidence of an intent
941 to defraud or intent to influence the bank.

942 Further, the record demonstrates several mitigating
943 considerations in respect to the remaining allegation and
944 finding that Judge Porteous failed to carefully update
945 his financial disclosure statements to provide an
946 accurate picture of his debt and gifts from friends in
947 the required financial disclosures under 5 U.S.C. App. 4
948 § 101, or the "Ethics in Government Act," in violation of
949 18 U.S.C. § 1001. This statute does not require an intent

950 to deceive for its violation. Without an intent to
 951 deceive element, violations of this statute do not entail
 952 the moral culpability associated with the previous
 953 alleged criminal violations.⁹² Moreover, Judge Porteous's
 954 violation of this provision arguably does not arise to a
 955 level of seriousness that would trigger a criminal
 956 investigation and/or indictment.⁹³ The Department of
 957 Justice Manual restricts discretion to prosecute to
 958 violations of 18 U.S.C. § 1001 when nondisclosures
 959 "conceal significant underlying wrongdoing."⁹⁴ It is not
 960 alleged that any impropriety was concealed other than a
 961 possible appearance of impropriety (not actual
 962 impropriety) created by the unreported gifts and the
 963 level of his already-substantial reported private debt.

964 As I have discussed above, the evidentiary support
 965 for the specific intent element is weak in these criminal
 966 allegations,⁹⁵ save the least serious alleged violation.
 967 As for the least serious infraction, it arguably does not
 968 even warrant criminal investigation. Moreover, the DOJ
 969 and a grand jury investigated similar charges involving

⁹² *McBride v. United States*, 225 F.2d 249, 254-55 (5th Cir. 1955) (noting that § 1001 does not require proof of an "evil" intent).

⁹³ That Judge Porteous's actions did not, in fact, trigger an investigation further supports this conclusion.

⁹⁴ *United States v. Blackley*, 986 F. Supp. 607, 613 (D.D.C. 1997). While the probable lack of criminal prosecution for the violation in this case does not excuse a finding of a violation, a violation that fails to trigger criminal prosecution under DOJ internal policy is persuasive evidence that such a violation is not an impeachable high crime or misdemeanor.

⁹⁵ The final allegation of conspiracy is subject to the same analysis as the independent charges.

the same evidence for nearly five years and did not find sufficient evidence to submit or obtain an indictment on any of the charges.

5.

There is reason to conclude that due process concerns render the entire record compiled by the special committee, and considered by the judicial council majority, an unreliable basis for a certification of possible impeachment.

Each judicial council must demonstrate that it has fully protected the values of judicial independence and integrity in every disciplinary proceeding; otherwise, the prospect of judges evaluating each other's integrity risks chilling to an extreme degree individual judges' exercise of independent judgment as a matter of fairness to litigants.⁹⁶ In recognition of this, Congress drafted the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 to control "potential excesses" of a circuit council by "requir[ing] that minimal due process rights be accorded any judicial officer whose actions or state of health are being investigated by a circuit council."⁹⁷ Accordingly, each judicial council must adopt rules requiring that adequate prior notice of any investigation be given to the judge complained against and that the judge be afforded an opportunity to

⁹⁶ The Federal Impeachment Process, *supra* note 17, at 101-02.

⁹⁷ H.R. Rep. No. 96-1313, at 14 (1980).

996 appear in person or by counsel at investigating panel
 997 proceedings, to present oral and documentary evidence, to
 998 compel the attendance of witnesses or the production of
 999 documents, to cross-examine witnesses, and to present
 1000 argument orally or in writing.⁹⁸ Additionally, this
 1001 judicial council, prior to this case, adopted other rules
 1002 designed to lend fairness and due process to the judicial
 1003 disciplinary proceedings.⁹⁹

1004 Judge Porteous was afforded most of these rights, but
 1005 he was not provided with all that would appear to be
 1006 required for minimal due process and fairness. First,
 1007 Judge Porteous was not represented by an attorney at
 1008 either the Special Committee hearing or the Judicial
 1009 Council hearing.¹⁰⁰ Judge Porteous's former attorney
 1010 resigned two weeks before the Special Committee hearings
 1011 in which all of the evidence was taken; the judge's
 1012 motion for continuance and for time to obtain new counsel
 1013 was denied; and he was forced to appear without the
 1014 assistance of counsel before the committee, which
 1015 retained two former United States Attorneys to present
 1016 the case for Judge Porteous's sanctioning and possible

⁹⁸ 28 U.S.C. § 358(a)&(b); H.R. Rep. No. 96-1313, at 14 (1980) ("The net effect is . . . that the possibility of one group of federal judges arbitrarily 'ganging up' or 'hazing' another is prevented." (citing *Chandler v. Judicial Council*, *supra* 398 U.S. at 140 (Douglas, dissenting).)

⁹⁹ See Fifth Circuit Rules Governing Complaints of Judicial Misconduct or Disability, Rule 11.

¹⁰⁰ See *id.* at 11(e); see also Judicial Conference Draft Rules Governing Judicial Conduct and Disability Proceedings, Rule 15(e) ("Representation by Counsel. The subject judge may choose to be represented by counsel in the exercise of any of the rights enumerated in this Rule. The costs of such representation may be borne by the United States as provided in Rule 20(e).")

1017 impeachment. Before the Special Committee, the attorneys
1018 compiled a voluminous record in an effort to prove
1019 violations of the Code of Judicial Conduct canons and
1020 several complex federal criminal statutes. Judge
1021 Porteous, representing himself, presented very little
1022 evidence and failed to cross examine vigorously the
1023 witnesses called by the committee.

1024 Second, at the beginning of the Special Committee
1025 hearing, Judge Porteous moved to exclude from the
1026 proceedings any evidence of his alleged misconduct that
1027 occurred prior to his appointment and confirmation as a
1028 federal district court judge in 1994. The Chief Judge,
1029 for the Special Committee, denied his motion, and as a
1030 result the record, upon which the Special Committee's
1031 recommendations are made and the Judicial Council's
1032 determinations are based, improperly contains evidence of
1033 his alleged misconduct between 1984 and 1994, when he was
1034 a state judge and before he took office as an Article III
1035 judge. As discussed above and conceded by the special
1036 committee, this conduct is beyond the authority of the
1037 judicial council¹⁰¹ and cannot be considered by Congress
1038 as grounds for its impeachment decision.¹⁰² Thus, this
1039 evidence did nothing but prejudice the record against
1040 Judge Porteous by raising extraneous allegations.

041

042

5.

¹⁰¹ See Special Committee Response to Reply Memorandum at 4.

¹⁰² See *supra* note 63.

1043 For these reasons, I respectfully dissent from the
 1044 Judicial Council majority's certification of possible
 1045 grounds for impeachment and instead would issue a public
 1046 reprimand subject to strict precautionary conditions.¹⁰³

¹⁰³ For these same reasons, I had, prior to the certification of this issue, respectfully recommended to the Judicial Council that Judge Porteous's conduct warrants a public reprimand but not certification to the Judicial Conference as possible grounds for impeachment. Accordingly, I recommend 1) that Judge Porteous be reprimanded by means of public announcement; 2) that on a temporary basis for a period of two years no criminal matters in which the United States is a party be assigned to him; 3) that he be required to enter a contract with the Lawyer Assistance Program of the Louisiana State Bar Association for counseling, monitoring, and such programs as it may require for recovery and rehabilitation from alcohol abuse and gambling addiction for a period of not less than five (5) years; 4) that, if such restrictions are not already imposed by the Lawyer Assistance Program, he be required to undergo alcohol testing and treatment and be prohibited from entering any gambling establishment, and 5) that he be required to make such written and personal reports to a monitor to be appointed by the Chief Circuit Judge in respect to his recovery, rehabilitation and financial condition, upon terms and conditions to be specified by the monitor during his tenure in office. This resolution was ultimately rejected, though Judge Porteous was amenable to such measures, See Judge Porteous's Reply Memorandum at 13.

It is unfortunate that the Judicial Council did not reach such a collegial settlement on this basis because a Judicial Council should strive to resolve these matters collegially when it can. See *Hastings*, 593 F. Supp. at 1383. Moreover, a resolution by reprimand is consonant with the circumstances surrounding Judge Porteous's transgressions, his contrition for those transgressions, and his strong commitment to turning his life around. Judge Porteous admits he committed non-impeachable transgressions; he "sincerely apologizes" for that conduct, and acknowledges he is "ultimately responsible for [his] actions and lapses." Judge Porteous's Reply Memorandum at 13. However, a number of undiscussed tragic mitigating factors surround Judge Porteous's actions. His transgressions occurred at a time when he was beset by undiagnosed depression, alcoholism, and gambling addiction. *Id.* at 2. These problems were exacerbated by the worsening state of his finances, his loss of his home to Hurricane Katrina, and his wife's sudden death soon thereafter. *Id.* at 12.

In reaction to this string of misfortune, though, Judge Porteous's conduct in the two years after his wife's death in 2005 displays Judge Porteous' strong commitment to change his life and eliminate the causes of his past indiscretions. *Id.* at 2. He has not gambled for over two years and has been free from alcohol for at least twenty months. *Id.* at 2; see also SCHAT at 481. He also is continuing his over two-year treatment for his depression. Judge Porteous's Reply Memorandum at 2. At the time of he filed his Reply Memorandum, Judge Porteous was in the process of signing a five-year contract with the Louisiana Bar's Lawyers Assistance Program, which involves weekly Alcoholics Anonymous meetings, meetings with support groups, meetings with a monitor, and random alcohol testing. *Id.* at 2. The Chief Judge and other judges of the Eastern District of Louisiana have expressed their belief that Judge Porteous has always performed his judicial duty with integrity and their confidence in his ability to carry out his

judicial responsibilities with fairness, impartiality and competence. They also note Judge Porteous's commitment to turning his life around. For these reasons, I believe that a public reprimand subject to strict precautionary conditions is the appropriate sanction in this case.

Exhibit 4

Congress of the United States
Washington, DC 20515

April 21, 2010

By Hand Delivery

The Honorable Nancy Erickson
Secretary of the Senate
United States Senate
Washington, DC 20510

Re: Impeachment of G. Thomas Porteous, Jr.
United States District Judge for the Eastern District of Louisiana
Replication - Errata

Dear Ms. Erickson:

On behalf of the House Managers, I am writing to inform the Senate of the following errata in the Replication that the House filed April 15, 2010.

- Page 5, first sentence in the Section entitled "Fourth Affirmative Defense," the word "voluntary" should be deleted, so that the sentence now reads: "The House of Representatives denies each and every allegation of this purported affirmative defense, which, in effect, seeks to suppress the statements of a highly educated and experienced Federal judge, made under oath, before other Federal judges."
- Page 6, last sentence in the Section entitled "Fourth Affirmative Defense," the words "voluntary and" should be deleted, so that the sentence now reads: "Accordingly, there is simply no credible basis to argue that the Senate should not consider Judge Porteous's immunized Fifth Circuit testimony."
- Page 9, first sentence in the Section entitled "Fourth Affirmative Defense," the word "voluntary" should be deleted, so that the sentence now reads: "The House of Representatives denies each and every allegation of this purported affirmative defense, which, in effect, seeks to suppress the statements of a highly educated and experienced Federal judge, made under oath, before other Federal judges."

- Page 9, last sentence in the Section entitled "Fourth Affirmative Defense," the words "voluntary and" should be deleted, so that the sentence now reads: "There is simply no credible basis to argue that the Senate should not consider Judge Porteous's immunized Fifth Circuit testimony."

I would request that any future published versions of this Replication incorporate and reflect the above changes. Further, in that the Replication has been published in the Congressional Record, to the extent consistent with the Senate rules, we respectfully request that this letter likewise be published.

A copy of this letter will be served upon counsel for Judge Porteous today through electronic mail.

Sincerely,

Alan I. Baron
Special Impeachment Counsel

S2358

CONGRESSIONAL RECORD—SENATE

April 15, 2010

The materials follow.

CONGRESS OF THE UNITED STATES,

Washington, DC, April 15, 2010.

Re Impeachment of G. Thomas Porteous, Jr.,
United States District Judge for the
Eastern District of Louisiana.

Hon. NANCY ERICKSON,
Secretary of the Senate,
U.S. Senate, Washington, DC.

DEAR MS. ERICKSON: Pursuant to Senate
Resolution 457 of March 17, 2010, enclosed is
the Replication of the House of Representa-
tives to the Answer of G. Thomas Porteous
Jr., to the Articles of Impeachment.

A copy of the Replication and of this letter
will be served upon counsel for Judge
Porteous today through electronic mail.

Sincerely,

ALAN I. BARON,

Special Impeachment Counsel.

IN THE SENATE OF THE UNITED STATES
Sitting as a Court of Impeachment

IN RE: IMPEACHMENT OF G. THOMAS PORTEOUS,
JR., UNITED STATES DISTRICT JUDGE FOR
THE EASTERN DISTRICT OF LOUISIANA

REPLICATION OF THE HOUSE OF REP-
RESENTATIVES TO THE ANSWER OF G.
THOMAS PORTEOUS, JR., TO THE ARTI-
CLES OF IMPEACHMENT

The House of Representatives, through its
Managers and counsel, respectfully replies to
the Answer to Articles of Impeachment as
follows:

RESPONSE TO THE PREAMBLE

Judge Porteous in his Answer to the Arti-
cles of Impeachment, denies certain of the
allegations and makes what are primarily
technical arguments as to the charging lan-
guage that do not address the factual sub-
stance of the allegations. However, it is in
Judge Porteous's Preamble that he sets forth
his real defense and, without denying he
committed the conduct that is alleged in the
Articles of Impeachment, insists that never-
theless he should not be removed from Of-
fice.

At several points in his Preamble, Judge
Porteous notes that he was not criminally
prosecuted by the Department of Justice, the
implication being that the House and the
Senate should abdicate their Constitu-
tionally assigned roles of deciding whether
the conduct of a Federal judge rises to the
level of a high crime or misdemeanor and
warrants the Judge's removal, and should in-
stead defer to the Department of Justice on
this issue. Judge Porteous maintains that
impeachment and removal may only proceed
upon conduct that resulted in a criminal
prosecution, no matter how corrupt the con-
duct at issue, or what reasons explain the
Department's decision not to prosecute.
Judge Porteous provides no support for this
contention because there is none—that is not
what the Constitution provides.

Indeed, the Senate has by its prior actions
made it clear that the decision as to whether
a Judge's conduct warrants his removal from
Office is the Constitutional prerogative of
the Senate—not the Department of Justice—
and the existence of a successful (or even an
unsuccessful) criminal prosecution is irrele-
vant to the Senate's decision. The Senate
has convicted and removed a Federal judge
who was acquitted at a criminal trial (Judge
Alcee Hastings). The Senate has also con-
victed a Federal judge for personal financial
misconduct (Judge Harry Claiborne) while at
the same time acquitting that same Judge of
the Article that was based specifically on the
fact of his criminal conviction.¹ Thus, Judge
Porteous's repeated references to what the
Department of Justice did or did not do adds

nothing to the Senate's evaluation of the
charges or the facts in this case.²

Further, according to Judge Porteous, pre-
Federal bench conduct cannot be the basis of
Impeachment, even if that conduct consisted
of egregious corrupt activities that was be-
yond the reach of criminal prosecution be-
cause the statute of limitations had run, and
even if Judge Porteous fraudulently con-
cealed that conduct from the Senate and the
White House at the time of his nomination
and confirmation. There is nothing in the
Constitution to support this contention, and
it flies in the face of common sense. The Sen-
ate is entitled to conclude that Judge
Porteous's pre-Federal bench conduct re-
veals him to have been a corrupt state judge
with his hand out under the table to bail
bondsmen and lawyers. Such conduct, which,
as alleged in Articles I and II, continued into
his Federal bench tenure, demonstrates that
he is not fit to be a Federal judge.

Finally, the notion that Judge Porteous is
entitled to maintain a lifetime position of
Federal judge that he obtained by acts that
included making materially false statements to
the United States Senate is untenable. Judge
Porteous would turn the confirmation
process into a sporting contest, in which, if
he successfully were to conceal his corrupt
background prior to the Senate vote and
thereby obtain the position of a Federal
judge, he is home free and the Senate cannot
remove him.

ARTICLE I

The House of Representatives denies each
and every statement in the Answer to Article
I that denies the acts, knowledge, intent
or wrongful conduct charged against Re-
spondent.

FIRST AFFIRMATIVE DEFENSE

The House of Representatives denies each
and every allegation of this purported af-
firmative defense and further states that Ar-
ticle I sets forth an impeachable offense as
defined in the Constitution of the United
States.

SECOND AFFIRMATIVE DEFENSE

The House of Representatives denies each
and every allegation of this purported af-
firmative defense, namely, that Article I is
vague. To the contrary, Article I sets forth
several precise and narrow factual assertions
associated with Judge Porteous's handling of
a civil case (the Liljeberg litigation), includ-
ing allegations that Judge Porteous "denied
a motion to recuse himself from the case, de-
spite the fact that he had a corrupt financial
relationship with the law firm of Amato &
Creely, P.C. which had entered the case to
represent Liljeberg" and that while that case
was pending, Judge Porteous "solicited and
accepted things of value from both Amato
and his law partner Creely, including a pay-
ment of thousands of dollars in cash." There
is no vagueness whatsoever in these allega-
tions. Article I's allegation that Judge
Porteous deprived the public and the Court
of Appeals of his "honest services"—a phrase
to which Judge Porteous raises a particular
objection—could not be more clear and free
of ambiguity as used in this Article, and ac-
curately describes Judge Porteous's dishon-
esty in handling a case, including his distor-
tion of the factual record so that his ruling
on the recusal motion was not capable of ap-
pellate review.³

THIRD AFFIRMATIVE DEFENSE

The House of Representatives denies each
and every allegation of the purported af-
firmative defense that Article I charges more
than one offense. The plain reading of Article
I is that Judge Porteous committed mis-
conduct in his handling of the Liljeberg case
by means of a course of conduct involving
his financial relationships with the attor-

neys in that case and his failure to disclose
those relationships or take other appropriate
judicial action. The separate acts set forth in
Article I constitute part of a single unified
scheme involving Judge Porteous's dishon-
esty in handling Liljeberg. Further, the
charges in this Article are fully consistent
with impeachment precedent.⁴

FOURTH AFFIRMATIVE DEFENSE

The House of Representatives denies each
and every allegation of this purported af-
firmative defense, which, in effect, seeks to
suppress the voluntary statements of a high-
ly educated and experienced Federal judge,
made under oath, before other Federal
judges. Judge Porteous was provided a grant
of immunity in connection with his Fifth
Circuit Hearing testimony, and the immu-
nity order provided that his testimony from
that proceeding could not be used against him
in "any criminal case." Simply put, an
impeachment trial is not a criminal case.⁵
Accordingly, there is simply no credible
basis to argue that the Senate should not
consider Judge Porteous's voluntary and im-
munized Fifth Circuit testimony.

ANSWER TO ARTICLE II

The House of Representatives denies each
and every statement in the Answer to Article
II that denies the acts, knowledge, intent
or wrongful conduct charged against Re-
spondent.

FIRST AFFIRMATIVE DEFENSE

The House of Representatives denies each
and every allegation of this purported af-
firmative defense and further states that Ar-
ticle II sets forth an impeachable offense as
defined in the Constitution of the United
States.

SECOND AFFIRMATIVE DEFENSE

The House of Representatives denies each
and every allegation of this purported af-
firmative defense, namely, that the Article
is vague. To the contrary, Article II sets
forth several precise and narrow factual as-
sertions associated with Judge Porteous's re-
lationship with the Marcottes—both prior to
and subsequent to Judge Porteous taking the
Federal bench. Article II alleges with spec-
ificity the things of value given to Judge
Porteous over time and identifies the judi-
cial or other acts taken by Judge Porteous
for the benefit of the Marcottes and their
business.

THIRD AFFIRMATIVE DEFENSE

The House of Representatives denies each
and every allegation of this purported af-
firmative defense, namely, that the Article
improperly charges multiple offenses. The
plain reading of Article II is that Judge
Porteous engaged in a corrupt course of con-
duct whereby, over time, he solicited and ac-
cepted things of value from the Marcottes,
and, in return, he took judicial acts or other
acts while a judge to benefit the Marcottes
and their business.

FOURTH AFFIRMATIVE DEFENSE

The House of Representatives denies each
and every allegation of this purported af-
firmative defense, namely, that Article II
improperly charges pre-Federal bench con-
duct as a basis for impeachment. First, Ar-
ticle II plainly alleges that Judge Porteous's
corrupt relationship with the Marcottes con-
tinued while he was a Federal Judge. Second,
Judge Porteous's assertion that pre-Federal
bench conduct may not form a basis for im-
peachment finds no support in the Constitu-
tion and is not supported by any other sound
legal or logical basis.⁶ As a factual matter, it
is especially appropriate for the Senate to
consider Judge Porteous's pre-Federal bench
corrupt relationship with the Marcottes
where it was affirmatively concealed from
the Senate in the confirmation process.

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where it involved conduct as a judicial officer directly bearing on whether he was fit to hold a Federal judicial office, and where that conduct, having now been exposed, brings disrepute and scandal to the Federal bench.

ARTICLE III

The House of Representatives denies each and every statement in the Answer to Article III that denies the acts, knowledge, intent or wrongful conduct charged against Respondent.

FIRST AFFIRMATIVE DEFENSE

The House of Representatives denies each and every allegation of this purported affirmative defense and further states that Article III sets forth an impeachable offense as defined in the Constitution of the United States.

SECOND AFFIRMATIVE DEFENSE

The House of Representatives denies each and every allegation of this purported affirmative defense, which alleges in substance that the allegations in Article III are vague. To the contrary, Article III sets forth several specific allegations associated with Judge Porteous's conduct in his bankruptcy proceedings. There is no credible contention that Judge Porteous cannot understand what he is charged with in this Article.

THIRD AFFIRMATIVE DEFENSE

The House of Representatives denies each and every allegation of this purported affirmative defense, which alleges, in substance, that Article III charges more than one offense. The plain reading of Article III is that Judge Porteous committed misconduct in his bankruptcy proceeding by making a series of false statements and representations, and by incurring new debt in violation of a Federal Bankruptcy Court order. This Article alleges a single unified fraud scheme, with the purpose of deceiving the bankruptcy court and creditors as to his assets and his financial affairs, so that Judge Porteous could enjoy and maintain wealth and income for personal purposes including gambling.

FOURTH AFFIRMATIVE DEFENSE

The House of Representatives denies each and every allegation of this purported affirmative defense, which, in effect, seeks to suppress the voluntary statements of a highly educated and experienced Federal judge, made under oath, before other Federal judges. Judge Porteous was provided a grant of immunity in connection with his Fifth Circuit Hearing testimony, effectively eliminating the possibility that any of that testimony could be used against him in any criminal case. An impeachment trial is not a criminal case. There is simply no credible basis to argue that the Senate should not consider Judge Porteous's voluntary and immunized Fifth Circuit testimony.

FIFTH AFFIRMATIVE DEFENSE

The House of Representatives denies each and every allegation of this purported affirmative defense—which does not take issue with the proposition that Judge Porteous committed misconduct in a Federal judicial bankruptcy proceeding, but contends only that the acts as alleged do not warrant impeachment. First, this is not an affirmative defense. It is up to the Senate to decide whether the facts surrounding the bankruptcy warrant impeachment.

Second, the Senate has in fact removed a judge for personal financial misconduct, and in 1986 convicted Federal Judge Harry Claiborne and removed him from office for evading taxes. It is significant that the Senate did not convict Judge Claiborne for the crime of evading taxes. Rather, the Senate acquitted Judge Claiborne of the one Article that charged him with having committed and having been convicted of a crime.

Third, what the Department of Justice may consider material for purposes of a criminal prosecution has nothing to do with what the Senate may deem to be material for purposes of determining whether Judge Porteous should be removed, from Office—an Office which requires that he oversee bankruptcy cases and administer and enforce the oath to tell the truth?

ARTICLE IV

The House of Representatives denies each and every statement in the Answer to Article IV that denies the acts, knowledge, intent or wrongful conduct charged against Respondent.

FIRST AFFIRMATIVE DEFENSE

The House of Representatives denies each and every allegation of this purported affirmative defense and further states that Article IV sets forth an impeachable offense as defined in the Constitution of the United States.

SECOND AFFIRMATIVE DEFENSE

The House of Representatives denies each and every allegation of this purported affirmative defense, which alleges the Article is vague. The allegations sets forth in Article IV are specific and precise. In fact, Judge Porteous's description of the charge fairly characterizes the offense: "In essence, Article IV alleges that Judge Porteous gave false answers on various forms that were presented in connection with the background investigation. . . . It is apparent, therefore, that Judge Porteous has a clear understanding of these allegations in Article IV, which specify the dates and circumstances when the statements were made, and the contents of the statements that are alleged to have been false. There is no credible contention that Article IV does not provide Judge Porteous specific notice as to what this Article alleges.

THIRD AFFIRMATIVE DEFENSE

The House of Representatives denies each and every allegation of this purported affirmative defense. The allegations set forth in Article IV are specific and precise. They charge in substance that Judge Porteous made a series of false statements to conceal the fact of his improper and corrupt relationships with the Marcottes and with attorneys Greely and Amate in order to procure the position of United States District Court Judge. Charging these four false statements, all involving a single issue, in a single Article is consistent with precedent.

FOURTH AFFIRMATIVE DEFENSE

The House of Representatives denies each and every allegation of this purported affirmative defense, alleging that the Senate cannot impeach Judge Porteous based on pre-Federal bench conduct. First, Judge Porteous's assertion that pre-Federal bench conduct may not form a basis for impeachment is not supported by the Constitution. Notwithstanding Judge Porteous's assertions to the contrary, the Constitution does not limit Congress from considering pre-Federal bench conduct in deciding whether to impeach, and there are compelling reasons for Congress to consider such conduct—especially where such conduct consists of making materially false statements to the Senate. The logic of Judge Porteous's position is that he cannot be removed by the Senate, even though the false statements he made to the Senate concealed dishonest behavior that goes to the core of his judicial qualifications and fitness to hold the Office of United States District Court Judge. The proposition that the Senate lacks power under these cir-

cumstances to remedy the wrong committed by Judge Porteous is simply untenable.

Respectfully submitted,

THE UNITED STATES HOUSE OF REPRESENTATIVES

By

ADAM SCHIFF,

Manager,

BOB GOODLATTE,

Manager,

ALAN I. BARON,

Special Impachment Counsel

Managers of the House of Representatives: Adam B. Schiff, Bob Goodlatte, Zoe Lofgren, Henry C. "Hank" Johnson, F. James Sensenbrenner, Jr.

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ENDNOTES

¹ Judge Harry E. Claiborne was acquitted of Article III, charging that he "was found guilty by a twelve-person jury" of criminal violations of the tax code, and that "a judgement of conviction was entered against [him]." See "Impeachment of Harry E. Claiborne," H. Res. 471, 98th Cong., 2d Sess. (1986) (Articles of Impeachment), 132 Cong. Rec. S15761 (daily ed. Oct. 9, 1986) (acquitting him on Article III).

² Moreover, the Department of Justice's investigation, hardly vindicated Judge Porteous. To the contrary, the Department viewed Judge Porteous's misconduct as so significant that it referred the matter to the Fifth Circuit for disciplinary review and potential impeachment, and set forth its findings in its referral letter.

³ Judge Porteous treats Article I as if it alleges the criminal offense of "honest services fraud," in violation of Title 18, United States Code, Section 1346, and that because the term "honest services" has been challenged as vague in the criminal context, the term is likewise vague as used in Article I. Despite Judge Porteous's suggestion to the contrary, Article I does not allege a violation of the "honest services" statute. Moreover, it could hardly be contended that proof that Judge Porteous acted dishonestly in the performance of his official duties does not go to the very heart of the Senate's determination of whether he is fit to hold office.

⁴ The respective Articles of Impeachment against Judges Halsted L. Ritter, Harold Louderback, and Robert W. Archbald each set forth lengthy descriptions of judicial misconduct arising from improper financial relationships between those judges and the private parties. These consist of detailed narration specifying numerous discrete acts. See "Impeachment of Judge Halsted L. Ritter," H. Res. 422, 74th Cong., 2d Sess. (March 2, 1936) and "Amendments to Articles of Impeachment Against Halsted L. Ritter," H. Res. 471, 74th Cong., 2d Sess. (March 30, 1936), reprinted in "Impeachment, Selected Materials, House Comm. on the Judiciary," Comm. Print (1973) [hereinafter "1973 Committee Print"] at 189-197 (H. Res. 422), 196-2002 (H. Res. 471); ["Articles of Impeachment against Judge Robert W. Archbald"], H. Res. 622, 62d Cong., 2d Sess. (1912), 48 Cong. Rec. (House) July, 1912 (8705-08), reprinted in 1973 Committee Print at 176, and ("Articles of Impeachment against George W. English," Cong. Rec. (House), Mar. 25, 1926 (6283-87), reprinted in 1973 Committee Print at 162.

⁵ "The Constitution makes it clear that impeachment was not considered by the Framers to be a criminal proceeding. It provides: 'Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States; but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment,

In The Senate of the United States

Sitting as a Court of Impeachment

In re:
 Impeachment of G. Thomas Porteous, Jr.,
 United States District Judge for the
 Eastern District of Louisiana

THE HOUSE OF REPRESENTATIVES' OPPOSITION TO JUDGE G. THOMAS PORTEOUS, JR.'S MOTION TO EXCLUDE THE USE OF HIS PREVIOUSLY IMMUNIZED TESTIMONY

The House of Representatives (the "House"), through its Managers and counsel, respectfully opposes Judge G. Thomas Porteous, Jr.'s Motion to Exclude the Use of His Previously Immunized Testimony (the "Motion to Exclude").¹ Judge Porteous has failed to present any credible argument to justify the exclusion before the Senate of his previous immunized testimony. Moreover, the Judicial Conference of the United States² considered it proper to provide Judge Porteous's testimony to the House of Representatives for use in the consideration of Judge Porteous's impeachment, and the United States District Court for the District of Columbia specifically denied Judge Porteous's emergency request to prevent the House Impeachment Task Force from using Judge Porteous's prior testimony in these impeachment proceedings.

¹ The House incorporates by reference into this Opposition its "Notice of Intent to Introduce at Trial Judge Porteous's Testimony Before the Fifth Circuit Special Committee," filed with the Committee on July 21, 2010, which contains a detailed discussion of the key substantive admissions made by Judge Porteous during his Fifth Circuit testimony.

² The Judicial Conference of the United States is chaired by the Chief Justice of the Supreme Court and is comprised of the Chief Justice, the chief judge of each United States Court of Appeals, a district court judge from each regional judicial circuit, and the chief judge of the Court of International Trade.

To exclude Judge Porteous's prior sworn testimony from the Senate's consideration, after the Judicial Conference determined that this testimony was proper for consideration by the House, would deny the Senate the ability to assess the full and complete record in this case.³ Judge Porteous's Motion to Exclude should therefore be denied. In support of its Opposition, the House respectfully submits:

PROCEDURAL BACKGROUND

Judge Porteous was afforded full and complete due process rights during the Fifth Circuit Special Committee proceedings. He was first notified of the appointment of the Fifth Circuit

³ As one example of the inaccurate record that would be created if Judge Porteous's prior sworn testimony were excluded, consider the argument raised by Judge Porteous's lawyers in their Motion to Dismiss Article III, related to Judge Porteous's bankruptcy. On page 16 of the Motion to Dismiss Article III, Judge Porteous's lawyers argue that Judge Porteous understood markers to be "checks (which are used to 'buy' chips from the casino, and which can be cashed at any time by the casino via electronic money transfer), not debt." No citation is given to this assertion, because Judge Porteous testified to the exact opposite conclusion before the Fifth Circuit Special Committee:

Q: Judge Porteous, you're familiar with the term "marker," aren't you?

A: Yes, sir.

Q: Would it be fair to state that, "A marker is a form of credit extended by a gambling establishment, such as a casino, that enables the customer to borrow money from the casino. The marker acts as the customer's check or draft to be drawn upon the customer's account at a financial institution. Should the customer not repay his or her debt to the casino, the marker authorizes the casino to present it to the financial institution or bank for negotiation and draw upon the customer's bank account any unpaid balance after a fixed period of time." Is that accurate?

A: I believe that's correct and probably was contained in the complaint or . . . the second complaint. There's a definition contained.

Q: And you have no quarrel with the definition?

A: No, sir.

See Fifth Circuit Special Committee Hearing Transcript ("Fifth Circuit Transcript"), at 64–65 (October 29, 2007) (emphasis added). Relevant excerpts from that Transcript are attached to this Opposition as Attachment 1.

Special Committee to investigate the judicial misconduct complaint filed by the United States Department of Justice (the “DOJ Complaint”) against him, and he was also advised of the Rules Governing Complaints of Judicial Misconduct or Disability, on May 24, 2007 – five months before the Special Committee hearing ultimately took place.⁴ Also on May 24, 2007, Judge Porteous was provided with a copy of the DOJ Complaint. The DOJ Complaint contained a detailed factual statement of the allegations against Judge Porteous.⁵

At the Fifth Circuit Special Committee hearing on October 29, 2007, Judge Porteous argued both for a continuance of the hearing in its entirety and for a continuance before he would be required to testify pursuant to a grant of immunity. First, in response to Judge Porteous’s request for a continuance of the proceedings in their entirety, Mr. Woods explained to the Special Committee the detailed amount of evidence and materials that Judge Porteous had been given prior to the hearing:

Mr. Woods: Yes, your Honor. To respond to Judge Porteous, beginning in August [2007], we invited his counsel to come and inspect all documents that we had, which were in boxes that had been received from the Department of Justice. His counsel at that time, Mike Ellis, said that he did not intend to offer any documents, he did not need to review the documents, he was only going to offer the medical records.

Nonetheless, I started sending him grand jury testimony and the bankruptcy file and a number of other voluminous files back in August, that he

⁴ See Letter from the Honorable Edith H. Jones to the Honorable G. Thomas Porteous, Jr. (May 24, 2007) (Attachment 2). It should be noted that Rule 10(c) of the Rules Governing Complaints of Judicial Misconduct or Disability for the Fifth Circuit, as amended through July 15, 2003, specifically stated that “[a]ll persons who are believed to have substantial information will be called as special committee witnesses, including the complainant and the subject judge. The witnesses may be questioned by the special committee or its counsel. The subject judge will be afforded the opportunity to cross-examine committee witnesses, personally or through counsel.”

⁵ See Judicial Misconduct Complaint filed by United States Department of Justice (May 18, 2007). (A copy of the DOJ Complaint is attached to Judge Porteous’s Motion to Dismiss Article III as Exhibit 1. It is also marked as HP Exhibit 4 on the House’s Exhibit List.)

could begin to review. And then in September and October, we provided documents unsolicited to try and give him all the documents in the case.

The charge itself is very detailed. He knows the allegations and the – it could not be more specific, naming what the offense is, what – the date of the offense, what document was falsified, what witness will testify to certain events. He's been on notice since May the 24th [2007] of very specific allegations, and we've offered the documents as soon as we got them from the Department of Justice.

Judge Benavides: Mr. Woods, you refer to the May 24th date. Is that the date that the complaint was forwarded to Judge Porteous?

Mr. Woods: Yes, your honor.

Judge Benavides: And that complaint, as I understood it, referred to the activities and details of the activities that were subsequently the basis of the complaint?

Mr. Woods: That's correct, your Honor.

Judge Benavides: So, the factual allegations have been made known with reference to the complaint since at least May 24th?

Mr. Woods: Yes, your Honor. And Judge Porteous was under criminal investigation by the Department of Justice, as he pointed out, for a number of years. His attorney at that time, Kyle Schonckas, appeared to be very much on top of the case, appeared at grand jury, and instructed various witnesses – well, one witness, Claude Lightfoot, Judge Porteous's bankruptcy counsel, not to answer certain questions. So, he was on top of the investigation, knew the allegations, and I'm sure kept this counsel of Judge Porteous advised.

Judge Benavides: Is there anything with – in reference to the actual complaint that was tendered later, that wasn't the subject of – or already information contained in the complaint from the Justice Department of May 24?

Mr. Woods: No, your Honor. We developed no new evidence other than to try to confirm everything in the complaint. I would point out that Judge Porteous was examined by Dr. Gabbard, and that report was furnished . . . to Judge Porteous as soon as we received it. So, that is the only new information that comes outside of that period of time alleged in the complaint.⁶

Second, regarding Judge Porteous's request for a continuance before he would be required to testify under a grant of immunity, Mr. Woods's co-counsel, Larry Finder, pointed out

⁶ See Fifth Circuit Transcript, supra note 3, at 6–8.

that the Rules Governing Complaints of Judicial Misconduct or Disability (which had been identified to Judge Porteous in May 2007) specifically identified the subject judge as a witness to be called to testify:

Mr. Finder: . . . Under the rules under which we’re operating, Rule 10C, Special Committee Witness. . . .

“All persons who are believed to have substantial information will be called as Special Committee witnesses, including the complainant and the subject judge.”

So, I think that there is no surprise here. It’s in the rules, which were provided a long, long time ago.⁷

Judge Porteous thereafter testified pursuant to a standard compulsion and immunity order, signed by Chief Judge Edith H. Jones (the “Immunity Order”). By immunizing Judge Porteous, the Fifth Circuit assured that Judge Porteous would have the opportunity to testify freely without fear of potential criminal consequences. Under any interpretation of the procedures, this was of benefit to Judge Porteous. It reflects not overreaching by the Special Committee, but rather, the Special Committee’s concerns about not putting Judge Porteous in a position in which his testimony could be used against him in a criminal case. These concerns naturally flowed from a consideration of the DOJ complaint letter. As Judge Jones correctly stated: “[I]mmunity is better than non immunity, sir.”⁸

The testimony that Judge Porteous thereafter gave contained numerous statements highly relevant to three of the Articles of Impeachment subsequently passed by the House of Representatives – Articles I, III, and IV. As explained in detail in the House’s Notice of Intent to Introduce at Trial Judge Porteous’s Testimony Before the Fifth Circuit Special Committee, these

⁷ Id. at 33–34 (emphasis added).

⁸ Id. at 34.

statements included (i) admissions regarding the receipt of cash from Messrs. Amato and Creely, (ii) admissions that these cash transactions “occasionally” followed Judge Porteous’s assignment of curatorships to Creely, (iii) admissions that Judge Porteous received an envelope of cash containing approximately \$2,000 from Amato while the Liljeberg case was pending before him, and (iv) numerous admissions pertaining to Judge Porteous’s false statements in his bankruptcy case.

ARGUMENT

Judge Porteous’s Motion to Exclude should be denied. The Immunity Order was properly granted by Chief Judge Jones for the purpose of considering whether Judge Porteous had engaged in judicial misconduct. Thereafter, Judge Porteous raised his “due process”-type complaints at numerous stages of the review, including before judges sitting as members of the Judicial Conference of the United States. For the same reasons that there was no cognizable legal impediment to the consideration of his immunized testimony for purposes of judicial discipline, there is likewise no constitutional principle that would support the exclusion of Judge Porteous’s prior immunized testimony from consideration by the Senate. Indeed, the impeachment proceedings are, in a sense, a continuation of the judicial misconduct inquiry that began in the Fifth Circuit.⁹ Neither the proceedings in the House nor the Senate are criminal and therefore Judge Porteous’s testimony should not be precluded.

⁹ The maximum disciplinary action that the Fifth Circuit Judicial Council could impose against Judge Porteous was a suspension from office without pay, which the Council imposed. Any further action to be taken against Judge Porteous, such as removal from office, must be done by Congress. Thus, based on the Fifth Circuit Judicial Council’s inability to take any further action, it forwarded the Porteous matter to the Judicial Conference of the United States.

**I. IMPEACHMENT PROCEEDINGS ARE NOT A “CRIMINAL CASE”
AND PRIOR IMMUNIZED TESTIMONY IS THEREFORE ADMISSIBLE**

The Immunity Order signed by Chief Judge Jones, compelling Judge Porteous to testify before the Fifth Circuit Special Committee, specifically tracked the language of 18 U.S.C. § 6002, which provides use immunity to compel testimony in response to a witness’s Fifth Amendment claim:

ORDERED, in compliance with 18 U.S.C. §§ 6002-6003 and pursuant to 28 U.S.C. § 353, that the witness, the Honorable G. Thomas Porteous, Jr., shall provide testimony and other information as to all matters about which he may be interrogated in a proceeding before or ancillary to the United States Court of Appeals for the Fifth Circuit; and that no testimony or other information that he provides under this order and no information directly or indirectly derived from such testimony or other information shall be used against him in any criminal case, except in a prosecution for perjury, making a false statement, or failure to comply with this order.¹⁰

The Porteous Immunity Order neither limited the House of Representatives Impeachment Task Force from using Judge Porteous’s prior testimony, nor does it limit the Senate from admitting and using Judge Porteous’s prior sworn testimony, because neither proceeding is a criminal case.

Judge Porteous has conceded that an impeachment proceeding is not a criminal case.¹¹ It is entirely lawful in a disciplinary proceeding concerning a judge or lawyer for the sworn immunized testimony of the individual in question to be considered by the body charged with determining whether removal from office is warranted. No judge has a property interest in his office. Removal from office is not an imprisonment, fine, or forfeiture of private property, nor are life or liberty in jeopardy in an impeachment. Indeed, this idea was put to rest by the

¹⁰ See Order, In Re Matters Involving U.S. District Judge G. Thomas Porteous, Jr., Dckt. No. 07-05-351-0085 (October 5, 2007) (emphasis added). (A copy of the Porteous Immunity Order is attached to Judge Porteous’s Motion to Exclude the Use of His Previously Immunized Testimony as Exhibit 2. It is also marked as HP Exhibit 17 on the House’s Exhibit List.)

¹¹ See Judge G. Thomas Porteous, Jr.’s Motion to Exclude the Use of His Previously Immunized Testimony, at 4.

Supreme Court, which held in Nixon v. United States that impeachment proceedings are separate and distinct from criminal proceedings:

There are two additional reasons why the Judiciary, and the Supreme Court in particular, were not chosen to have any role in impeachments. First, the Framers recognized that most likely there would be two sets of proceedings for individuals who commit impeachable offenses – the impeachment trial and a separate criminal trial. In fact, the Constitution explicitly provides for two separate proceedings The Framers deliberately separated the two forums to avoid raising the specter of bias and to ensure independent judgments.¹²

Judge Porteous’s assertion that impeachment is “criminal in nature” adds nothing to his argument. Either the impeachment is a “criminal case,” at which his immunized testimony may not be used against him, or it is not such a case. Removal from office is not a criminal sanction, and therefore the use of Judge Porteous’s immunized testimony cannot be precluded in the Senate proceedings.

Judge Porteous relies on Federal case law (dating back to as early as 1886) in support of his “criminal in nature” argument. Those cases reference such topics as a customs fraud statute and the forfeiture of money after a defendant was convicted of violating gambling and tax statutes. All of the cases to which Judge Porteous cites are inapposite to these impeachment proceedings because none of those cases even remotely involved judicial impeachments.¹³

¹² 506 U.S. 224, 234 (1993) (emphasis added).

¹³ See Michael J. Gerhardt, Rediscovering Nonjusticiability, Judicial Review of Impeachments after Nixon, 44 DUKE L. J. 231, 233–34 (1994) (“[N]o area of constitutional law needs to be nonjusticiable more than impeachment, . . . because the textual, historical, and structural bases for its nonjusticiability are stronger than those for any other area. . . . In other words, impeachment and the political question doctrine make each other possible.”); Akhil Reed Amar, On Impeaching Presidents, 28 HOFSTRA L. REV. 291, 301 (1999) (“Impeachment is, technically, what judges call a ‘political question’ that ordinary courts will not touch. . . . There is indeed ‘judicial review’ of impeachment issues, but this review occurs in the Senate itself, which sits as a high court of impeachment.”) (emphasis added).

Judge Porteous's second argument that impeachments are "criminal in nature" purports to be based on the text of the Constitution itself. However, the historical development of impeachment in this country makes it abundantly clear that the Framers of the Constitution had no intention of impeachment proceedings being treated akin to criminal proceedings. As Alexander Hamilton observed at the time of the debates surrounding the adoption of the Constitution, impeachment trials were understood as deliberative sessions for the Senate to decide whether an official had committed an "abuse or violation of some public trust."¹⁴ Justice Story likewise observed, in the early nineteenth century, that "an impeachment is a proceeding of a purely political nature. It is not so much designed to punish an offender as to secure the state against gross official misdemeanors. It touches neither his person nor his property; but simply divests him of his political power."¹⁵ And, as noted, the text of the Constitution specifically provides for a single remedy upon impeachment: removal from Office. This is not a criminal punishment.

Any possible doubt after the Constitution's adoption on whether impeachment proceedings were criminal in nature was settled in the early impeachment inquiries, such as, for example, the impeachment of Judge John Pickering in 1803 for performing his judicial functions while drunk and for acts of indecency.¹⁶ And indeed, the Senate in the modern era has removed a Federal judge, for example, on a single article of impeachment charging that the Judge's actions had "brought his court into scandal and disrepute, to the prejudice of said court and

¹⁴ THE FEDERALIST NO. 65, at 396 (Alexander Hamilton) (Rossiter, ed., 1961).

¹⁵ Joseph Story, Commentaries on the Constitution § 801 (1833).

¹⁶ See Articles of Impeachment of Judge John Pickering, reprinted in IMPEACHMENT: SELECTED MATERIALS, 93d Cong., 1st Sess., at 131 (1973), as reprinted in, U.S. IMPEACHMENT: SELECTED MATERIALS, 105th Cong., 2d Sess., at 1267 (1998).

public confidence in the administration of justice.”¹⁷ It is the preservation of the integrity of the courts that is at issue in Judge Porteous’s impeachment.

The third and final argument Judge Porteous raises to support his contention that impeachment proceedings are “criminal in nature” is that one sentence of one law review article written by the House’s expert, Professor Akhil Amar of Yale Law School, states that “[i]mpeachment is a quasi-criminal affair.” However, Judge Porteous’s reliance on this single phrase, taken out of context, from an article written in 1999, does not advance his position. In the article in question, Professor Amar does not, of course, suggest that there are any procedural consequences that result from his characterization of impeachment as “quasi-criminal.” Rather, Professor Amar’s publications over the last fifteen years contravene Judge Porteous’s assertions.¹⁸

¹⁷ See Proceedings of the U.S. Senate in the Trial of Impeachment of Halstead L. Ritter, S. Doc. No. 200, 74th Cong., 2d. Sess., at 611 (1936). See also, e.g., NAT’L COMMISSION ON JUDICIAL DISCIPLINE AND REMOVAL 31 (1873) (noting that the House voted to impeach District Judge Mark Delahay for unsuitable personal habits and questionable financial dealings); Hearing Before the Task Force on Judicial Impeachment of the Committee on the Judiciary, To Consider Possible Impeachment of United States District Judge G. Thomas Porteous, Jr. (Part IV), Ser. No. 111-46, 111th Cong., 1st Sess., at 29, Written Statement of Professor Michael Gerhardt, at 3 (Dec. 15, 2009). (in reviewing the historical record of impeachments, noting that “[o]f the seven men (all federal judges) actually removed from office by the Senate, four were charged with and convicted of misconduct that did not constitute any indictable offenses”).

¹⁸ See Akhil Reed Amar, Fifth Amendment First Principles: The Self-Incrimination Clause, 93 MICH. L. REV. 857, 909 (March 1995) (“Textually, the Fifth Amendment speaks to witnessing *within* the criminal case, not beyond.”); Akhil Reed Amar, Self-Incrimination and the Constitution: A Brief Rejoinder to Professor Kamisar, 93 MICH. L. REV. 1011, 1011 (March 1995) (“When John Doe is obliged—under pain of contempt—to testify before Congress, or in a civil case, the Fifth Amendment has not (yet) been violated: it applies only to a criminal case. If Doe’s congressional, or civil, testimony is never introduced as evidence in a *criminal* case, the Amendment, on our plain meaning reading, once again has never been violated: Doe has never been made an involuntary *witness* against himself in a criminal case) (underlined emphasis added); Akhil Reed Amar, Right and Huang: How to Prevent an Oliver North-style Escape, Slate (July 20, 1997) (“Senate hearings are obviously not a ‘criminal case.’”); AKHIL REED AMAR, AMERICA’S CONSTITUTION: A BIOGRAPHY 187, 200 (2005) (noting that the U.S. system of impeachment is “sharply and distinct from ordinary criminal punishment” and that in the

II. THE JUDICIAL CONFERENCE OF THE UNITED STATES CONCLUDED THAT IT IS PROPER FOR JUDGE PORTEOUS'S IMMUNIZED TESTIMONY TO BE USED IN THESE IMPEACHMENT PROCEEDINGS

The use of Judge Porteous's immunized Fifth Circuit testimony in these impeachment proceedings has been sanctioned by the Judicial Conference of the United States.¹⁹ It would be extraordinary indeed for the Senate to reject the uniform view of the judicial branch (including judges from Judge Porteous's own Circuit) that Judge Porteous's immunized testimony is properly to be considered in determining his fitness for Office.

A. The Judicial Conference of the United States's Receipt of the Record from the Fifth Circuit and Transmittal of the Record to the House of Representatives

After the Fifth Circuit Special Investigatory Committee concluded its investigation and hearing into the possible judicial misconduct of Judge Porteous, it forwarded to the Fifth Circuit Judicial Council (the "Judicial Council") a comprehensive written Report presenting both the findings of the investigation and the Special Committee's recommendation for necessary and appropriate action by the Judicial Council. On November 20, 2007, the Judicial Council informed Judge Porteous that he could examine the Special Committee Report and re-examine the evidence on which it was based at the headquarters of the Court of Appeals for the Fifth Circuit in New Orleans, Louisiana. Judge Porteous was also extended the opportunity to file a written reply to the Special Committee Report, which he submitted on December 4, 2007, to which the Special Committee replied.

Constitution, "the words 'high . . . Misdemeanors' most sensibly meant high misbehavior or high misconduct, whether or not strictly criminal.").

¹⁹ Unlike the miscellaneous federal cases that Judge Porteous cites to in his Motion to Exclude, the Judicial Conference has concluded it is appropriate for Judge Porteous's prior immunized testimony to be used in these impeachment proceedings.

On December 13, 2007, the Judicial Council held a meeting at which it fully considered the Special Committee's Report, Judge Porteous's Reply, the Special Committee's Response, and the record of the proceedings before the Special Committee. Judge Porteous appeared before the Judicial Council and spoke in his own defense. By a majority vote, the Judicial Council determined that the Report and the record contained "substantial evidence supporting the allegations listed in the Special Investigatory Committee Report," and concluded that Judge Porteous had "engaged in conduct which might constitute one or more grounds for impeachment under Article II of the Constitution."²⁰ The Judicial Council thereafter transmitted to the Chief Justice of the United States, as presiding officer of the Judicial Conference, all relevant materials related to Judge Porteous, including the full transcript which contained Judge Porteous's testimony from the Fifth Circuit Special Committee hearing.

The Judicial Conference Committee on Judicial Conduct and Disability (the "Judicial Conference Committee") thereafter issued a Report and Recommendations to the Chief Justice of the United States and Members of the Judicial Conference of the United States finding "substantial evidence that Judge Porteous has engaged in misconduct that may warrant consideration by the Congress of impeachment under Article II of the United States Constitution."²¹ The Judicial Conference Committee's Report and Recommendations specifically addressed Judge Porteous's arguments that he had been denied his due process rights at the Fifth Circuit Special Committee hearing and concluded:

²⁰ See Memorandum Order and Certification by the Judicial Council of the Fifth Circuit, at 4 (December 20, 2007). (A copy of the Memorandum Order and Certification is marked as HP Exhibit 6(a) on the House's Exhibit List.)

²¹ See Report and Recommendations of the Judicial Conference Committee on Judicial Conduct and Disability, at 2 (June 2008). (A copy of the Report and Recommendations is marked as HP Exhibit 7(c) on the House's Exhibit List.)

The Committee finds no deprivation of procedural due process.

* * *

With regard to the opportunity to be heard, adequate time for preparation, and the right to counsel, Judge Porteous had two different counsel, was given several extensions of time to respond to the complaint, and obtained two postponements of the SC hearing.

* * *

Any lack of preparation time or of counsel to represent him was the result of Judge Porteous's indecision as to his future course of action rather than a failure by the SC to accord sufficient time. There is no reason to conclude that Judge Porteous was caught unaware by the evidence or charges against him or that additional time would have altered the record in even a trivial, much less material, way. The hearing and evidence drew upon the long DOJ investigation in which he had been represented by counsel. The salient issues concern evidence of conduct about which there is little dispute. Judge Porteous does not deny that there were false statements in his financial disclosure forms, that he solicited and received cash and things of value from lawyers who appeared before him, that he failed to recuse in matters where such lawyers appeared, [or] that he made false statements in his personal bankruptcy proceedings

* * *

Accordingly, the process afforded to Judge Porteous easily met the due process standard.²²

Thereafter, on June 17, 2008, the Judicial Conference of the United States, chaired by Supreme Court Chief Justice Roberts, determined unanimously, upon the recommendation of the Judicial Conference Committee, to transmit a Certificate to the United States House of Representatives which provided, in part:

Pursuant to 28 U.S.C. § 355(b)(1), the Judicial Conference of the United States certifies to the House of Representatives its determination that consideration of impeachment of United States District Judge G. Thomas Porteous (E.D. La.) may be warranted. This determination is based on evidence provided in the Report by the Special Investigatory Committee to the Judicial Council of the United States Court of Appeals for the Fifth Circuit and the Report and Recommendations of the Committee on Judicial Conduct and Disability. Said certification is

²² Id. at 15–17 (emphasis added).

transmitted with the entire record of the proceeding in the Judicial Council of the Fifth Circuit and in the Judicial Conference of the United States.²³

The Judicial Conference thus explicitly chose to transmit to the House Judge Porteous's Fifth Circuit immunized, sworn testimony, for the House's use in the possible impeachment of Judge Porteous. The propriety of using Judge Porteous's prior immunized testimony could hardly receive a more compelling endorsement.

B. The United States District Court for the District of Columbia Denied Judge Porteous's Motion for a Temporary Restraining Order to Preclude the House of Representatives from Using His Immunized Fifth Circuit Testimony

On the eve of the House Impeachment Task Force hearings, Judge Porteous filed a lawsuit in the United States District Court for the District of Columbia, seeking a temporary restraining order preventing the House from using Judge Porteous's prior immunized testimony "in any way, whether direct or indirect, evidentiary or non-evidentiary, in connection with the work of the Impeachment Task Force."²⁴ After fully considering Judge Porteous's arguments, and hearing oral argument on the matter, the United States District Court denied Judge Porteous's Motion, thereby refusing to issue an order that effectively would have enjoined the House from utilizing Judge Porteous's prior sworn testimony.²⁵

²³ Certificate of the Judicial Conference of the United States to the Speaker of the United States House of Representatives (June 17, 2008) (emphasis added). (A copy of the Certificate of the Judicial Conference is marked as HP Exhibit 7(b) on the House's Exhibit List.)

²⁴ See Memorandum of Points and Authorities in Support of Judge G. Thomas Porteous, Jr.'s Motion for a Temporary Restraining Order and a Preliminary Relief, Porteous v. Baron, et al., Case No. 09-02131 (D.D.C. Nov. 13, 2009), at 1 (Attachment 3). Judge Porteous's arguments in his present Motion to Exclude are in many respects identical to the arguments Judge Porteous presented to the United States District Court.

²⁵ See PACER Docket Report, Porteous v. Baron, et al., Case No. 09-02131 (D.D.C.), at 3-4 ("Minute Entry for proceedings held before Judge Richard J. Leon. Motion Hearings held on 11/16/2009. Plaintiff's Motion for Temporary Restraining Order – DENIED.") (Attachment 4). On April 7, 2010, in light of the House's supplemental pleading in support of its motion to

CONCLUSION



Judge Porteous's attempts to suppress key evidence from consideration by the Senate Impeachment Trial Committee – namely, his prior sworn, immunized testimony – can only serve to warp the fact finding process. The Committee's main function is to receive evidence and to take testimony, and to thereafter report all of the evidence to the full Senate. The Committee and the Senate would be severely harmed in their ability to fully understand and consider the facts in this case if they are deprived of the opportunity to consider the prior sworn immunized testimony of Judge Porteous.

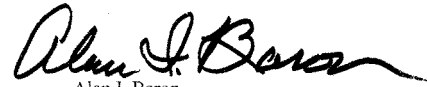
WHEREFORE, the House respectfully requests that Judge Porteous's Motion to Exclude the Use of His Previous Immunized Testimony be denied, and that Judge Porteous's immunized testimony before the Fifth Circuit Special Committee be admitted into evidence before the Senate Impeachment Trial Committee.

dismiss – in which the House informed the court that it had adopted Articles of Impeachment against Judge Porteous – Judge Leon issued an order requiring the parties to show cause why the district court case should not be dismissed as moot. Id. at 4.

Respectfully submitted.

THE UNITED STATES HOUSE OF REPRESENTATIVES

By
 
Adam Schiff, Manager Bob Goodlatte, Manager


Alan I. Baron
Special Impeachment Counsel

Managers of the House of Representatives: Adam B. Schiff, Bob Goodlatte, Zoe Lofgren, Henry C. "Hank" Johnson, F. James Sensenbrenner, Jr.

July 28, 2010

Attachment One

THE SPECIAL COMMITTEE FOR
THE FIFTH CIRCUIT JUDICIAL COUNCIL

IN RE: . DOCKET NUMBER
COMPLAINT OF JUDICIAL . 07-05-351-0085
MISCONDUCT AGAINST .
UNITED STATES DISTRICT JUDGE . NEW ORLEANS, LOUISIANA
G. THOMAS PORTEOUS, JR., . OCTOBER 29, 2007
EASTERN DISTRICT OF LOUISIANA. 10:00 A.M
.....

TRANSCRIPT OF PROCEEDINGS HAD BEFORE
EDITH H. JONES, CHIEF JUDGE, US COURT OF APPEALS, FIFTH CIRCUIT;
FORTUNATO BENAVIDES, US CIRCUIT JUDGE;
AND SIM LAKE, US DISTRICT JUDGE

VOLUME 1 OF 2

A P P E A R A N C E S:

INVESTIGATIVE COUNSEL FOR THE SPECIAL COMMITTEE:

Ronald G. Woods
Attorney at Law
5300 Memorial Drive
Suite 1000
Houston, Texas 77007
713-862-9600

Lawrence D. Finder
Haynes and Boone, LLP
1221 McKinney Street
Suite 2100
Houston, Texas 77010
713-547-2006

FOR JUDGE G. THOMAS PORTEOUS, JR:

Judge G. Thomas Porteous, Jr.
500 Poydras Street
Room C206
New Orleans, Louisiana 70130
504-589-7585

Proceedings recorded by mechanical stenography, transcript
produced by computer-aided transcription.

1 A P P E A R A N C E S: (Continued)

2 ALSO APPEARING:

3 Patrick Fanning for Joseph M. Mole
4 Ralph Capitelli for Robert Creely and Jacob Amato
Jerome Winsberg for Claude Lightfoot, Jr.

5 OFFICIAL COURT REPORTER:

6 Cheryll K. Barron, CSR, CM, FCRR
7 U.S. District Court
8 515 Rusk Street
Room 8016
Houston, Texas 77002
713-250-5585

9 ALSO PRESENT:

10 Pam Wood
11 Jerry Fink
12 Peter Ainsworth
13 Dan Petalas
Wayne Horner
Julie Mandelsohn

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Cheryll K. Barron, CSR, CM, FCRR

713.250.5585

1 CHIEF JUDGE JONES: Sir, for the reasons stated --
2 Mr. Woods?

3 MR. WOODS: Yes, your Honor. To respond to
4 Judge Porteous, beginning in August, we invited his counsel to
5 come and inspect all the documents that we had, which were in
6 boxes that had been received from the Department of Justice.
7 His counsel at the time, Mike Ellis, said that he did not
8 intend to offer any documents, he did not need to review the
9 documents, he was only going to offer the medical records.

10 Nonetheless, I started sending him grand jury
11 testimony and the bankruptcy file and a number of other
12 voluminous files back in August, that he could begin to review.
13 And then in September and October, we provided documents
14 unsolicited but to try to give him all the documents in the
15 case.

16 The charge itself is very detailed. He knows the
17 allegations and the -- it could not be more specific, naming
18 what the offense is, what -- the date of the offense, what
19 document was falsified, what witness will testify to certain
20 events. He's been on notice since May the 24th of very
21 specific allegations, and we've offered the documents as soon
22 as we got them from the Department of Justice.

23 JUDGE BENAVIDES: Mr. Woods, you refer to the May 24th
24 date. Is that a date that the complaint was forwarded to Judge
25 Porteous?

10:03 1 MR. WOODS: Yes, your Honor.

2 JUDGE BENAVIDES: And that complaint, as I understand
3 it, referred to the activities and details of the activities
4 that were subsequently the basis of the complaint?

10:03 5 MR. WOODS: That's correct, your Honor.

6 JUDGE BENAVIDES: So, the factual allegations have
7 been made known with reference to the complaint since at least
8 May the 24th?

9 MR. WOODS: Yes, your Honor. And Judge Porteous was
10:03 10 under criminal investigation by the Department of Justice, as
11 he pointed out, for a number of years. His attorney at that
12 time, Kyle Schonekas, appeared to be very much on top of the
13 case, appeared at grand jury, and instructed various witness --
14 well, one witness, Claude Lightfoot, Judge Porteous' bankruptcy
10:04 15 counsel, not to answer certain questions. So, he was on top of
16 the investigation, knew the allegations, and I'm sure kept this
17 counsel of Judge Porteous advised.

18 JUDGE BENAVIDES: Is there anything with -- in
19 reference to the actual complaint that was tendered later, that
10:04 20 wasn't the subject of -- or already information contained in
21 the complaint from the Justice Department of May 24?

22 MR. WOODS: No, your Honor. We developed no new
23 evidence other than to try to confirm everything in the
24 complaint. I would point out that Judge Porteous was examined
10:04 25 by Dr. Gabbard, and that report was furnished to Gabbard as

10:04 1 soon as we -- was furnished to Judge Porteous as soon as we
2 received it. So, that is the only new information that comes
3 outside of that period of time alleged in the complaint.
4 JUDGE PORTEOUS: Might I just make one quick response?
10:05 5 CHIEF JUDGE JONES: Yes, sir.
6 JUDGE PORTEOUS: This originally started out pursuant
7 to documentation I received from you, as a complaint instituted
8 by the Court for justice, when I called issue with the fact
9 that it did not meet the proper format. At a later date, I was
10:05 10 informed that this is a 2J proceeding instituted by the chief
11 judge.
12 CHIEF JUDGE JONES: Yes, sir.
13 JUDGE PORTEOUS: I still don't have anything signed by
14 the chief judge. The complaint I received is signed by
10:05 15 Mr. Woods; and it says, "on behalf of the Committee." I just
16 got that.
17 Now, granted, it does have some of the material
18 from the original allegations; but some are, in fact, omitted,
19 which can only suggest that those items clearly did not
10:05 20 establish any proof of a crime or that they were too old to
21 bring or that it had nothing to do with my actions as a federal
22 judge. And I'm speaking with particular reference to nothing
23 about bail bonds and Wrinkled Robe is in any way included in
24 this particular proceeding.
10:06 25 CHIEF JUDGE JONES: What has all that got to do with a

10:36 1 to at least get my thoughts together before I am compelled to
2 testify. Mr. Woods had that immunity notice; and I just saw it
3 today, just saw it for the first time today.
4 MR. WOODS: It was provided on Friday, your Honor.
10:36 5 JUDGE PORTEOUS: Yeah, on Friday. I understand. No.
6 The log was provided on Friday.
7 MR. WOODS: Right.
8 JUDGE PORTEOUS: The document was not provided on
9 Friday, and you know that.
10:37 10 MR. WOODS: That's correct.
11 CHIEF JUDGE JONES: All right, sir. We're not going
12 to go crosswise with each other. Thank you very much.
13 JUDGE PORTEOUS: I'm sorry, Judge.
14 CHIEF JUDGE JONES: Mr. Finder will to respond.
10:37 15 MR. FINDER: Yes, thank you, Judge. Under the rules
16 under which we're operating, Rule 10C, Special Committee
17 Witness.
18 CHIEF JUDGE JONES: You want to speak up there?
19 MR. FINDER: Yeah, I'm sorry. I'll use the podium.
10:37 20 Is this better?
21 CHIEF JUDGE JONES: Yes.
22 MR. FINDER: "All persons who are believed to have
23 substantial information will be called as Special Committee
24 witnesses, including the complainant and the subject judge."
10:37 25 So, I think that there is no surprise here. It's

10:37 1 in the rules, which were provided a long, long time ago.

2 JUDGE PORTEOUS: I don't doubt that that's what the
3 rules say, your Honor. I'm not taking issue with that. I'm
4 taking issue with the fact that it's the first time I've been
10:37 5 given immunity, without ever seeing the document.

6 CHIEF JUDGE JONES: Well, with --

7 JUDGE PORTEOUS: I'm only asking for the rest of the
8 day.

9 CHIEF JUDGE JONES: -- immunity is better than non
10:38 10 immunity, sir. Continuance is denied. You may take the stand.

11 JUDGE PORTEOUS: All right.

12 CHIEF JUDGE JONES: Thank you.

13 JUDGE LAKE: Raise your right hand to be sworn.

14 You do solemnly swear that the testimony you
10:38 15 shall give in this proceeding will be the truth, the whole
16 truth, and nothing but the truth, so help you God?

17 JUDGE PORTEOUS: I do.

18 **GABRIEL THOMAS PORTEOUS, JR., DULY SWORN, TESTIFIED:**

19 **DIRECT EXAMINATION**

10:38 20 BY MR. FINDER:

21 Q. Judge Porteous, a little background information, please.

22 You were a judge in the 24th Judicial District
23 Court in the State of Louisiana from approximately 1984 to
24 October 1994. Is that correct?

10:38 25 A. That's correct.

11:19 1 BY MR. FINDER:
2 Q. So, what -- the amounts I just read to you apply to today.
3 When you first took the bench, presumably they were slightly
4 lower?
11:19 5 A. Presumably, yes.
6 Q. Okay. And these have to do with income and gifts?
7 A. Right.
8 Q. As I just read?
9 A. Yes, sir.
11:20 10 Q. Judge Porteous, you're familiar with the term "marker,"
11 aren't you?
12 A. Yes, sir.
13 Q. Would it be fair to state that, "A marker is a form of
14 credit extended by a gambling establishment, such as a casino,
11:20 15 that enables the customer to borrow money from the casino. The
16 marker acts as the customer's check or draft to be drawn upon
17 the customer's account at a financial institution. Should the
18 customer not repay his or her debt to the casino, the marker
19 authorizes the casino to present it to the financial
11:20 20 institution or bank for negotiation and draw upon the
21 customer's bank account any unpaid balance after a fixed period
22 of time." Is that accurate?
23 A. I believe that's correct and probably was contained in the
24 complaint or -- or the second complaint. There's a definition
11:20 25 contained.

11:20 1 Q. And you have no quarrel with the definition?
2 A. No, sir.
3 Q. Okay. Judge Porteous, if markers are a form of borrowing
4 or an extension of credit, by definition, would you agree that
11:21 5 from approximately August 20th to 21st, a two day period in
6 2001, you borrowed approximately \$8,000 from Treasure Chest
7 Casino in Kenner, Louisiana, by taking out approximately eight
8 1,000-dollar markers over a two day period?
9 A. Well, did I sign \$8,000 worth of markers? You have records
11:21 10 that suggest I did that. I agree with you.
11 Q. Okay.
12 A. The issue is that we haven't -- I have an issue with
13 whether that's credit. The statement itself says it acts like
14 a check against your account. Now, I did not have an
11:21 15 \$8,000-dollar line of credit at -- where was that? Treasure
16 Chest?
17 Q. Treasure Chest. I didn't ask you about a line of credit,
18 though.
19 A. I understand, but I'm explaining to you why that's
11:21 20 misrepresentative.
21 Q. Okay. Well --
22 A. Those are just repetitive 1,000 -- had I written a check
23 for a thousand, I do not believe I would have been in violation
24 of any court order.
11:22 25 JUDGE BENAVIDES: But you're saying that you didn't

Attachment Two



SC EXHIBIT - 00047

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUITCHAMBERS OF
EDITH H. JONES
CHIEF JUDGE12505 U.S. Courthouse
515 Rusk Avenue
Houston, TX 77002
Telephone (713) 250-5484

May 24, 2007

Honorable G. Thomas Porteous, Jr.
Judge, U.S. District Court
Eastern District of Louisiana
U.S. Courthouse, Chambers C206
500 Poydras Street
New Orleans, LA 70130

Re: Appointment of Special Committee

Dear Judge Porteous:

I transmit to you a copy of a judicial misconduct complaint filed by John C. Keeney, Deputy Assistant, Attorney General, United States Department of Justice. Pursuant to Rule 4(F)(2) of the Fifth Circuit Rules Governing Complaints of Judicial Misconduct or Disability (copy attached), I hereby provide notice of the appointment of myself, Judge Fortunato P. Benavides, and Judge Sim Lake as a special committee to investigate this complaint. In addition, I have appointed Ronald G. Woods, Esq. to serve as investigator for the special committee.

Please note your rights as conferred under Rule 11 of the Rules Governing Complaints of Judicial Misconduct or Disability. Kyle Boudreau in the Circuit Executive's Office can assist you if you require further information.

Sincerely,

A handwritten signature in cursive script, reading "Edith H. Jones".

Edith H. Jones

Enclosure
Attachment

SC00049

Attachment Three

Civil Action No.

1. Introduction

The Supreme Court has held a grant of immunity pursuant to Title 18, United States Code, §6002 is coextensive with the protections provided by the Fifth Amendment. *See Kastigar v. United States*, 406 U.S. 441, 453 (1972). The Fifth Amendment's protection against compulsory self-incrimination is not limited to proceedings which are labeled "criminal." The self-incrimination clause has long been held to apply to proceedings of a "quasi-criminal nature" which involve the imposition of punishment on an individual "by reason of offenses committed by him, which though they may be civil in form, are in their nature criminal." *See Boyd v. United States*, 116 U.S. 633-34 (1886); *see also Lees v. United States*, 150 U.S. 476, 480-81 (1893); *United States v. United States Coin & Currency*, 401 U.S. 715, 718 (1971); and *United States v. Ward*, 448 U.S. 242, 251-55 (1980) (applying *Boyd*, but concluding that the proceeding in which the penalty was imposed was not "quasi-criminal" as that term is used in *Boyd*).

This motion and the related civil action seek to prevent defendants from violating Judge Porteous' Fifth Amendment right not to be compelled to be a witness against himself. The defendants have violated this right, and continue to do so, through their use of Judge Porteous' immunized testimony in pursuing his impeachment and removal from office. In order to protect his Fifth Amendment rights and to preserve the protections of the immunity conferred upon him by the Fifth Circuit pursuant to § 6002, Judge Porteous asks this Court to enter a temporary restraining order and preliminary injunction restraining and enjoining defendants, in their capacity as Counsel to the Impeachment Task Force, from using his immunized testimony in any way, whether direct or indirect, evidentiary or non-evidentiary, in connection with the work of the Impeachment Task Force.

2. Factual Background

For approximately nine years the United States Department of Justice (the “Department”), through the Public Integrity Section of the Criminal Division, conducted a criminal investigation of Judge Porteous. The investigation concluded without the filing of criminal charges. Despite its decision to decline to bring charges, on May 18, 2007, the Department submitted a formal complaint of judicial misconduct to Edith H. Jones, Chief Judge of the United States Court of Appeals for the Fifth Circuit (“Chief Judge Jones”).

This letter led to the appointment of a Special Investigatory Committee (the “Special Committee”) to investigate the Department’s allegations of judicial misconduct. The Special Committee held a hearing on October 29, 2007, at which Judge Porteous was called as a witness by counsel to the Special Committee. The Special Committee obtained a compulsion order and Judge Porteous’ testimony was compelled under a grant of statutory immunity pursuant to 18 U.S.C. § 6002. While testifying under the immunity order, Judge Porteous answered numerous questions relating to the allegations of judicial misconduct in the complaint, resulting in a transcript of more than 125 pages.

Based upon the hearing, the Special Committee issued a report to the Judicial Council of the Fifth Circuit (the “Judicial Council”), concluding that Judge Porteous had committed misconduct that might constitute one or more grounds for impeachment. This report was accepted and approved by a majority of the Judicial Council, while a minority of judges filed a dissenting report. These reports were forwarded to the Judicial Conference of the United States (the “Conference”), and on June 17, 2008, the Conference transmitted a certificate to the Speaker of the House expressing the Conference’s determination that consideration of impeachment of Judge Porteous might be warranted.

On September 17, 2008, the House of Representatives of the 110th Congress passed House Resolution 1448. This Resolution provides that the Judiciary Committee shall inquire whether the House should impeach Judge Porteous. This was followed by the engagement of Alan I. Baron as Special Counsel to lead an inquiry into Judge Porteous' impeachment. On January 13, 2009, the House of Representatives of the 111th Congress passed House Resolution 15 which continued the authority of House Resolution 1448 of the 110th Congress, in order to permit the work of the Impeachment Task Force to continue.

Since that time, defendants Alan I. Baron, Mark Dubester, and Harold Damelin have been reviewing the materials provided by the Fifth Circuit, including the Special Committee Report, the hearing testimony, and other information. In their official capacity as counsel to the Impeachment Task Force, defendants have received the immunized testimony of Judge Porteous but have failed to implement measures designed to prevent the immunized testimony from being used against Judge Porteous, as is typical when a subsequent prosecution is brought against an individual who has provided testimony under a grant of immunity.

Defendants have reviewed the immunized testimony and made use of it in determining the course of the impeachment investigation, in interviewing witnesses, and in considering what additional evidence to seek or what investigative leads to pursue. Upon information and belief, defendants have published Judge Porteous' immunized testimony by exposing potential witnesses to the testimony or its contents, either through the questioning of these witnesses based upon Judge Porteous' testimony or by seeking the witnesses' reaction to his testimony. *See* Declaration of Richard W. Westling in Support of Motion for Temporary Restraining Order and Preliminary Injunction, dated October 12, 2007 (Attached as Exhibit "1").

3. Applicable Law and Argument

a. The Standard for Injunctive Relief

The U.S. Court of Appeals for the District of Columbia has adopted a four-part test for granting a preliminary injunction. The Court must weigh:

(1) whether the plaintiffs have demonstrated that there is a substantial likelihood that they will prevail on the merits on one of their claims; (2) whether the plaintiffs have shown that they will sustain irreparable harm if injunctive relief is not awarded; (3) whether the issuance of injunctive relief will not “substantially harm” the other parties; and (4) whether awarding the relief is in the public interest.

Mova Pharm. Corp. v. Shalala, 140 F.3d 1060, 1066 (D.C. Cir. 1998). The factors “must be viewed as a continuum, with more of one factor compensating for less of another. If the arguments for one factor are particularly strong, an injunction may issue even if the arguments in other areas are rather weak.” *Blackman v. District of Columbia*, 277 F. Supp. 2d 71, 77-78 (D.D.C. 2003) (internal citation and quotations omitted). Issuing an injunction may be justified “where there is a particularly strong likelihood of success on the merits even if there is a relatively slight showing of irreparable injury.” *Id.* at 78 (internal citation and quotations omitted). In this case, Judge Porteous has a very high likelihood of success on the merits and also meets the remaining three elements of the test.

b. Judge Porteous is Likely to Succeed on the Merits

i. The Fifth Amendment Claim

The Fifth Amendment's privilege against compulsory self-incrimination provides that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. In *Kastigar v. United States*, the Supreme Court considered whether the government could compel a witness to testify "by granting immunity from the use of compelled testimony and evidence derived therefrom ('use and derivative use immunity')" without violating the witness' Fifth Amendment rights. 406 U.S. 441, 443 (1972). The Court held that use and derivative use immunity conferred under 18 U.S.C. §6002 – the same type of immunity conferred on Judge Porteous – "is coextensive with the scope of the privilege against self-incrimination, and therefore is sufficient to compel testimony over a claim of privilege." *Id.* at 453.¹

The Court noted that where an individual can demonstrate that he has given immunized testimony, prosecutors:

have the burden of showing that their evidence is not tainted by establishing that they had an independent, legitimate source for the disputed evidence. . . . This burden of proof, which we reaffirm as appropriate, is not limited to the negation of taint; rather, it imposes on the prosecution the affirmative duty to prove that the evidence it proposes to use is derived from a legitimate source wholly independent of the compelled testimony.

406 U.S. at 460 (citations omitted).

¹ The Fifth Amendment and the immunity order in this case both provide protections in a "criminal case." As discussed in Section 3(b)(ii) below, however, the Fifth Amendment's privilege against self-incrimination has also been extended to quasi-criminal cases and, accordingly, under *Kastigar*, the reach of the immunity statute and the immunity order in this case must be coextensive with the Fifth Amendment.

Under *Kastigar*, the first requirement for obtaining relief and, thereby, protection of an individual's Fifth Amendment right, is to demonstrate that the individual provided immunized testimony. This is clearly established here. See Immunity Order, dated October 5, 2007 (Attached as Exhibit "2") and Transcript of Testimony of G. Thomas Porteous, Jr. before the Special Committee (Attached as Exhibit "3"). This showing alone is sufficient to trigger the prosecution's "heavy" burden under *Kastigar* to show affirmatively that its effort to impeach Judge Porteous rests on independent and untainted evidence.

ii. Impeachment is Quasi-Criminal

It is anticipated that the defendants will argue that the ruling in *Kastigar* is limited to criminal prosecutions in the criminal courts and that it has no application to an impeachment proceeding before Congress. The Supreme Court, however, has placed no such limits on the Fifth Amendment's protection against compelled self-incrimination. Indeed, the Supreme Court has held that the contours of the Fifth Amendment protection against compulsory self-incrimination are not limited to traditional criminal prosecutions; rather they extend to quasi-criminal proceedings which involve the imposition of punishment on an individual "by reason of offenses committed by him, which though they may be civil in form, are in their nature criminal." See *Boyd*, 116 U.S. at 633-34; see also *Lees*, 150 U.S. at 480-81; *United States Coin & Currency*, 401 U.S. at 718; and *Ward*, 448 U.S. at 251-55.

There is, perhaps, no clearer example of a quasi-criminal proceeding than the impeachment of a civil officer under the Constitution. As a noted constitutional scholar has observed "[i]mpeachment is a quasi-criminal affair, in which the Senate, sitting as a court, is asked to convict the defendant of high criminality or gross misbehavior in a trial designed not merely to remove but also to stigmatize the offending officeholder." Akhil Reed Amar,

Impeaching Presidents, 28 HOFSTRA L. REV. 291, 307 (1999). Compare *Hastings v. United States Senate Impeachment Trial Committee*, 716 F. Supp. 38, 41 (D.D.C. 1989)(holding that for Double Jeopardy purposes an impeachment is not a criminal proceeding and finding that impeachment trials are sui generis).

The view that impeachment is quasi-criminal finds significant support in the text of the Constitution itself. First, Article II, Section 4 provides that “[t]he President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.” U.S. Const. art. II, §4. This provision clearly reflects the quasi-criminal nature of the impeachment process. That the offenses supporting impeachment are grave offenses (even though they are not necessarily limited to indictable offenses) supports the view that liability in an impeachment is based upon criminal acts. Second, Article I, Section 3 provides that “[j]udgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.” U.S. Const. art. I, § 3. This clause also supports the view of impeachment as quasi-criminal in its reference to “conviction” and in permitting punitive measures including removal from office and disqualification to hold office in the future. Finally, Article III, Section 2, provides that “[t]he Trial of all Crimes, except in Cases of Impeachment shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.” U.S. Const. art. III, §2. Here, the Constitution makes clear that trials in cases of impeachment will be a “trial of a crime” but will be exempted from the requirement of a

trial by jury. In light of its quasi-criminal character, Supreme Court precedent supports the view that the Fifth Amendment's protection against compulsory self-incrimination applies to an impeachment proceeding. As a result, the principles in *Kastigar* should apply to the use of Judge Porteous' immunized testimony.

iii. The Speech and Debate Clause

A threshold issue to the ability of Judge Porteous to succeed on the merits of his claim is a determination as to whether this action is barred by the Constitution's Speech and Debate Clause. The Clause provides that: "for any Speech or Debate in either House, [Members of Congress] shall not be questioned in any other Place." U.S. Const. art. I, §6, cl. 1. This clause has been interpreted to provide immunity to Members of Congress and their staff for actions "that fall within the sphere of legitimate legislative activity." *Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 501 (1975). The Supreme Court has noted that:

In determining whether particular activities other than literal speech or debate fall within the legitimate legislative sphere we look to see whether the activities took place 'in a session of the House by one of its members in relation to the business before it. More specifically, we must determine whether the activities are an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House.

The power to investigate and to do so through compulsory process plainly falls within that definition. This Court has often noted that the power to investigate is inherent in the power to make laws because a legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change.

Servicemen's Fund, 421 U.S. at 503-504 (internal quotations and citations omitted). Here, while no legislation is contemplated, the House is involved in an impeachment inquiry and, clearly,

impeachment is another matter “which the Constitution places within the jurisdiction of either House.” *Id.* See also *Hastings v. United States Senate Impeachment Trial Committee*, 716 F. Supp. 38, 42 (D.D.C. 1989)(holding impeachment falls under the Speech and Debate Clause).

While the impeachment process may be protected by the Speech and Debate Clause, as with any other assertion of the Clause, its protections are not absolute. In this suit challenging a constitutional violation during an impeachment inquiry, the corollary to the Supreme Court’s reference to the “legitimate legislative sphere” is that the action complained of must be within the “legitimate impeachment sphere” in order for the action to be protected by the Clause. Based on this precedent, the question for this Court is whether the use of immunized testimony in violation of an individual’s Fifth Amendment self-incrimination right can ever be a “legitimate” activity for Congress, whether undertaken as part of its power to legislate or to impeach.

The Supreme Court has published language that seems to mandate otherwise. For instance, in *Gravel v. United States*, 408 U.S. 618 (1972) that “no prior case has held that Members of Congress would be immune if they executed an invalid resolution by themselves carrying out an illegal arrest, or if, in order to secure information for a hearing, themselves seized the property or invaded the privacy of a citizen. Neither they nor their aides should be immune from liability or questioning in such circumstances.” *Id.* at 621. As pointed out in *Servicemen’s Fund*, the actions referred to in this passage were not essential to legislating and could easily be contrasted with the routine subpoena for information which confronted the *Servicemen’s Fund* Court. Nor can it be argued that failing to protect against the improper use of Judge Porteous’ immunized testimony or that its publication to witnesses is essential to impeaching. Indeed, prosecutors are regularly confronted with the problem of prosecuting a witness who has received

statutory immunity and have learned to put measures in place to protect against the improper use of such testimony. See e.g., *Untied States v. North*, 920 F.2d 940, 942-3 (D.C. Cir. 1990).

More recently, the District of Columbia Circuit noted that the Speech and Debate Clause “privilege permits Congress to conduct investigations and obtain information without interference from the courts, **at least when these activities are performed in a procedurally regular fashion.**” *Brown & Williamson Tobacco Corp. v. Williams*, 62 F.3d 408, 416 (D.C. Cir. 1995)(emphasis added). While the Clause confers immunity on Members of Congress for all actions “within the legislative sphere, even though their conduct, if performed in other than legislative contexts, would in itself be unconstitutional or otherwise contrary to the criminal or civil statutes,” the Clause “is not, to be sure, a blanket prohibition on suits against congressmen” or their staffs. *Id.* at 415. “Closely related – indeed a corollary – to this right to pursue investigations is Congress’ privilege to use materials in its possession without judicial interference. In this context, the privilege operates to insulate materials held by Congress from claims based on actions or occurrences other than Congress’ present use.” *Id.* at 416-17 (internal quotations and citations omitted). The Court noted that:

The law is clear that even though material comes to a legislative committee by means that are unlawful or otherwise subject to judicial inquiry the subsequent use of the documents by the committee staff in the course of official business is privileged legislative activity. Although Members and (more likely) their agents can be held accountable for illegal seizures, that does not affect Congress’ privilege to use illegally seized materials, so long as that use is consistent with legislative purposes. Uses that fall outside the confines of legislative action, however such as the dissemination of investigatory information outside Congress are not protected.

Id. (internal quotations and citations omitted).

Judge Porteous' action is not based upon the Congress' receipt of the immunized testimony; rather it is based upon the "present use" of those materials by counsel to the Impeachment Task Force in violation of Judge Porteous' Fifth Amendment rights. This use is not within the "legitimate impeachment sphere" nor is it "essential to impeaching." While the protections afforded by the Speech and Debate Clause are broad, there is no prior case holding that where the "use" itself violates a constitutional right there is absolute immunity from suit. In all the cases cited, the courts were called upon to determine whether the actions complained of were committed by congressional staff as part of the "legitimate" or "essential" function of one of the Houses. Judge Porteous suggests that the use of immunized testimony in violation of the Fifth Amendment cannot be deemed part of the legitimate impeachment function and, as a result, the Speech and Debate Clause should not bar this suit.

iv. Justiciability

Defendants will doubtless attempt to avoid consideration of this case by claiming that all issues related to impeachment are nonjusticiable under the political question doctrine. *See Nixon v. United States*, 506 U.S. 224 (1993); *see also Hastings v. United States Senate Impeachment Trial Committee*, 716 F. Supp. 38, 43 (D.D.C. 1989)(holding senate trial procedures were non-justiciable).² While the Supreme Court's ruling in *Nixon* did find that the procedures used by the Senate to try a federal judge were not subject to review by the Court, the issues raised here

² The district court's ruling in *Hastings* was affirmed by the U.S. Court of Appeals for the District of Columbia Circuit in an unpublished opinion. *See Hastings v. United States Senate*, 887 F.2d 332, 1989 WL 122685 (D.C. Cir., Oct. 8, 1989). The District of Columbia Circuit, while affirming the district court, did not find the matter was non-justiciable. The Court based its decision on problems of ripeness and prematurity, and upon the lack of precedent supporting the issuance of injunctive or declaratory relief intercepting ongoing proceedings of the legislative branch. In contrast, here Judge Porteous is not seeking to enjoin the proceedings of the legislative branch, rather he is seeking to enjoin violations of his constitutional rights that are occurring, and which will continue to occur, because of Impeachment counsels' use of his immunized testimony to further the impeachment process.

do not fall under the ruling in *Nixon*. The ruling of nonjusticiability in *Nixon* relied on the concept of “textual commitment” which the Supreme Court expressed as:

A controversy is nonjusticiable – i.e., involves a political question – where there is “a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it” *Baker v. Carr*, 369 U.S. 186, 217 (1962). But the courts must, in the first instance, interpret the text in question and determine whether and to what extent the issue is textually committed. *See ibid.*; *Powell v. McCormack*, 395 U.S. 486, 519 (1969). As the discussion that follows makes clear, the concept of a textual commitment to a coordinate political department is not completely separate from the concept of a lack of judicially discoverable and manageable standards for resolving it; the lack of judicially manageable standards may strengthen the conclusion that there is a textually demonstrable commitment to a coordinate branch.

Nixon, 506 U.S. at 228-29. Here there is no textual commitment of the Fifth Amendment right against compulsory self-incrimination. Article I, Section 2 of the Constitution vests the power of impeachment solely in the House of Representatives and Article I, Section 3 provides that the Senate has the sole power to try all impeachments. However, these textual provisions do not suggest that the Congress alone is constitutionally committed to determining if an individual’s Fifth Amendment rights have been violated based upon the government use of his immunized testimony in an attempt to impose a punishment in a quasi-criminal proceeding. Moreover, the determination and vindication of the self-incrimination rights guaranteed by the Fifth Amendment are clearly not the types of questions for which there is “a lack of judicially discoverable and manageable standards to be used for resolving it.” *Id.*

Judge Porteous’ claim is based upon the improper use of his immunized testimony in violation of his Fifth Amendment rights. This violation has occurred, and will continue to occur,

while defendants, in their capacity as counsel to the Impeachment Task Force, make direct and indirect use of his immunized statements in pursuing the quasi-criminal impeachment process. Because he has established a constitutional violation and is likely to succeed on the merits, injunctive relief is appropriate in this matter.

c. Judge Porteous Will Sustain Irreparable Harm

“It has long been established that the loss of constitutional freedoms, ‘for even minimal periods of time, unquestionably constitutes irreparable injury.’” *Mills v. District of Columbia*, 571 F.3d 1304, 1312 (*quoting Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Here, Judge Porteous is subject to a continuing infringement of his rights under the Fifth Amendment in the absence of injunctive relief. Moreover, given the anticipated commencement of hearings by the Impeachment Task Force on November 17, 2009 it is imperative that this Court order injunctive relief to prevent continuing use of the immunized testimony. Further, if the Court fails to act and to preserve the status quo pending a review of Judge Porteous’ constitutional claims, the impeachment process will likely moot any pending review. While Judge Porteous suggests that this Court can determine the extent of any violation of his Fifth Amendment rights at this point in time, it is also clear that the legacy of *Nixon v. United States* is to deny any post-hearing consideration of his constitutional claims in the event he is impeached and removed from office based, in part, upon the use of his immunized testimony.

d. Injunctive Relief Will Not Substantially Harm Defendants

While defendants will claim that they will be harmed by the entry of a temporary restraining order or a preliminary injunction, any such harm will be limited to a delay in the proceedings while Judge Porteous’ constitutional claims are considered by the Court. Defendants clearly have a right to pursue their impeachment inquiry of Judge Porteous

expeditiously and efficiently. However, their right to do so does not trump Judge Porteous' right to have his Fifth Amendment rights protected. While this litigation may be the source of some temporary delay, it will not prejudice the defendants except to the extent that a ruling limiting the use of the immunized testimony and protecting Judge Porteous' constitutional rights may have an impact upon their ability to further the impeachment inquiry.

e. Injunctive Relief Is in the Public Interest

The public has an interest in having the courts ensure that the individual rights guaranteed by the Constitution are protected. *See, e.g., G&V Lounge, Inc. v. Michigan Liquor Control Commission*, 23 F.3d 1071, 1079 (citing *Gannett Co., Inc. v. DePasquale*, 443 U.S. 368, 383 (1979)). The public interest is also served by allowing the defendants to expeditiously conduct a full and fair impeachment inquiry into the allegations against Judge Porteous. However, the public interest is clearly not served where the tension between protecting individual rights and expedition in pursuing the impeachment inquiry is resolved by deferring to expediency at the expense of constitutional rights. Because pursuit of the impeachment inquiry can only be in the public interest where that inquiry is conducted in a manner which is entirely consistent with Judge Porteous' constitutional rights, thereby ensuring public confidence in the process and its result, injunctive relief here is in the public interest.

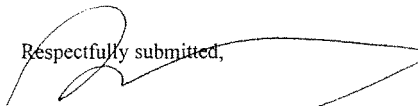
4. Conclusion

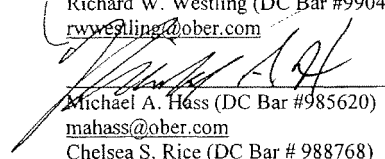
For these reasons, the Judge Porteous requests that the Court issue an order:

(1) granting a temporary restraining order and preliminary injunction enjoining defendants, in their capacity as counsel to the Impeachment Task Force, from making any use of Judge Porteous immunized testimony, whether direct or indirect, evidentiary or non-evidentiary, in connection with the impeachment inquiry; and

(2) setting an adversary hearing to determine the extent of any prior use of Judge Porteous' immunized testimony in order to fashion an appropriate form of injunctive relief to protect Judge Porteous from any and all past violations of his constitutional rights.

Respectfully submitted,


Richard W. Westling (DC Bar #990496)
rwwestling@ober.com


Michael A. Hass (DC Bar #985620)
mahass@ober.com

Chelsea S. Rice (DC Bar # 988768)
csrice@ober.com

Ober, Kaler, Grimes & Shriver, P.C.
1401 H Street, N.W., Suite 500
Washington, D.C. 20005-3324
Telephone: 202-326-5012
Facsimile: 202-336-5212

Attorneys for Plaintiff, G. Thomas Porteous, Jr.

OF COUNSEL:

Samuel S. Dalton (Louisiana Bar #4473)
2001 Jefferson Highway
P.O. Box 10501
Jefferson, LA 70181-0501

Rémy Voisin Starns (Louisiana Bar # 26522)
Attorney At Law PLLC
2001 Jefferson Highway
P.O. Box 10501
Jefferson, LA 70181-0501

Attachment Four

TYPE-D

**U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:09-cv-02131-RJL**

PORTEOUS v. BARON et al
Assigned to: Judge Richard J. Leon
Cause: 28:1331 Fed. Question: Violation 5th & 8th Amendme

Date Filed: 11/13/2009
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: U.S. Government Defendant

Plaintiff

G. THOMAS PORTEOUS, JR.
United States District Judge

represented by **Michael A. Hass**
OBER, KALER, GRIMES & SHRIVER
1401 H Street, NW
Suite 500
Washington, DC 20005-3324
(202) 326-5070
Fax: (202) 326-5270
Email: mahass@ober.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Chelsea Selleck Rice
OBER, KALER, GRIMES & SHRIVER
1401 H Street, NW
Suite 500
Washington, DC 20005-3324
(202) 326-5030
Fax: (202) 408-0640
Email: csrice@ober.com
ATTORNEY TO BE NOTICED

Richard William Westling
OBER, KALER, GRIMES & SHRIVER
1401 H Street, NW
Suite 500
Washington, DC 20005-3324
(202) 326-5012
Fax: (202) 408-0640
Email: rwwestling@ober.com
ATTORNEY TO BE NOTICED

V.

Defendant

ALAN I. BARON
*Special Counsel, Impeachment Task Force,
Committee on the Judiciary, United States
House of Representatives*

represented by **Ariel B. Waldman**
U.S. HOUSE OF REPRESENTATIVES
219 Cannon House Office Building
Washington, DC 20515
(202) 225-9700
Email: ariel.waldman@mail.house.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Irvin B. Nathan
U.S. HOUSE OF REPRESENTATIVES

219 Cannon House Office Building
 Washington, DC 20515
 (202) 225-9700
 Fax: (202) 226-1360
 Email: irv.nathan@mail.house.gov
LEAD ATTORNEY

Defendant**MARK DUBESTER**

*Majority Counsel, Impeachment Task Force,
 Committee on the Judiciary, United States
 House of Representatives*

represented by **Ariel B. Waldman**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Irvin B. Nathan
 (See above for address)
LEAD ATTORNEY

Defendant**HAROLD DAMELIN**

*Minority Counsel, Impeachment Task Force,
 Committee on the Judiciary, United States
 House of Representatives*

represented by **Ariel B. Waldman**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Irvin B. Nathan
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
11/13/2009	<u>1</u>	COMPLAINT against ALAN I. BARON, MARK DUBESTER, HAROLD DAMELIN (Filing fee \$ 350, receipt number 4616025391) filed by G. THOMAS PORTEOUS, JR. (Attachments: # <u>1</u> Civil Cover Sheet)(dr) (Entered: 11/13/2009)
11/13/2009		SUMMONS (5) Issued as to ALAN I. BARON, MARK DUBESTER, HAROLD DAMELIN, U.S. Attorney and U.S. Attorney General (dr) (Entered: 11/13/2009)
11/13/2009	<u>2</u>	MOTION for Temporary Restraining Order, MOTION for Preliminary Injunction by G. THOMAS PORTEOUS, JR (Attachments: # <u>1</u> Memorandum of Points and Authorities, # <u>2</u> Exhibit 1, # <u>3</u> Exhibit 2, # <u>4</u> Exhibit 3, # <u>5</u> Certificate of Compliance)(dr) (Entered: 11/13/2009)
11/13/2009	<u>3</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Chelsea Selleck Rice, :Firm- Ober, Kaler, Grimes & Shriver, :Address- 1401 H Street NW, Suite 500, Washington, D.C. 20005, Phone No. - (202) 326-5030. by G. THOMAS PORTEOUS, JR (dr) (Entered: 11/13/2009)
11/13/2009	<u>4</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- Richard William Westling, :Firm- Ober, Kaler, Grimes & Shriver, :Address- 1401 H Street NW, Suite 500, Washington, D.C. 20005, Phone No. - (202) 326-5012. by G. THOMAS PORTEOUS, JR (dr) (Entered: 11/13/2009)
11/13/2009		Set/Reset Hearings: Preliminary Injunction Hearing set for 11/16/2009 at 4:00 PM in Courtroom 18 before Judge Richard J. Leon. (lcrjl1) (Entered: 11/13/2009)
11/13/2009	<u>5</u>	Memorandum in opposition to re <u>2</u> MOTION for Temporary Restraining Order MOTION for Preliminary Injunction and Motion to Dismiss filed by ALAN I. BARON, MARK DUBESTER, HAROLD DAMELIN. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Exhibit 1-4, # <u>3</u> Exhibit 5-14, # <u>4</u> Text of Proposed Order)(Nathan, Irvin) (Entered: 11/13/2009)
11/13/2009	<u>7</u>	MOTION to Dismiss by ALAN I. BARON, MARK DUBESTER, HAROLD DAMELIN. (See

		Docket Entry <u>5</u> to view document. I Counsel is reminded to filed the motion as a separate docket entry in future). (znmw,) (Entered: 11/16/2009)
11/14/2009	<u>6</u>	REPLY to opposition to motion re <u>2</u> MOTION for Temporary Restraining Order MOTION for Preliminary Injunction filed by G. THOMAS PORTEOUS, JR. (Attachments: # <u>1</u> Exhibit 1 - Supplemental Declaration)(Hass, Michael) (Entered: 11/14/2009)
11/16/2009		MINUTE ORDER granting <u>3</u> Motion for Admission Pro Hac Vice of Chelsea Selleck Rice. It is hereby ORDERED that the motion is GRANTED; and it is further ORDERED that CHELSEA SELLECK RICE shall be admitted pro hac vice. Signed by Judge Richard J. Leon on 11/16/2009. (lcrj11) (Entered: 11/16/2009)
11/16/2009		MINUTE ORDER granting <u>4</u> Motion for Admission Pro Hac Vice of Richard William Westling. It is hereby ORDERED that the motion is GRANTED; and it is further ORDERED that RICHARD WILLIAM WESTLING shall be admitted pro hac vice. Signed by Judge Richard J. Leon on 11/16/2009. (lcrj11) (Entered: 11/16/2009)
11/16/2009		Minute Entry for proceedings held before Judge Richard J. Leon. Motion Hearing held on 11/16/2009. Plaintiff's MOTION <u>2</u> for Temporary Restraining Order - DENIED. (Court Reporter Patty Gels (kc) (Entered: 11/16/2009)
12/02/2009		SCHEDULING ORDER. It is hereby ORDERED that the defendants shall file their supplemental memorandum in support of their Motion to Dismiss no later than December 18, 2009, that the plaintiff shall file his response no later than January 8, 2010, and that the defendants shall file any reply no later than January 15, 2010; and it is further ORDERED that, should the Court deny the defendants' Motion to Dismiss, the parties shall file a proposed schedule for supplemental briefing on the plaintiff's Motion for Preliminary Injunction no later than 30 days after the Court's ruling. Signed by Judge Richard J. Leon on 12/1/2009. (lcrj11) (Entered: 12/02/2009)
12/02/2009		Set/Reset Deadlines: Defendants' Supplemental Memorandum due by 12/18/2009. Plaintiff's response due by 1/8/2010. Defendants' Reply due by 1/15/2010. (kc) (Entered: 12/02/2009)
12/18/2009	<u>8</u>	Supplemental MOTION to Dismiss by ALAN I. BARON, HAROLD DAMELIN, MARK DUBESTER (Attachments: # <u>1</u> Exhibit)(Waldman, Ariel) (Entered: 12/18/2009)
01/08/2010	<u>9</u>	Memorandum in opposition to re <u>8</u> Supplemental MOTION to Dismiss filed by G. THOMAS PORTEOUS, JR. (Westling, Richard) (Entered: 01/08/2010)
01/15/2010	<u>10</u>	REPLY to opposition to motion re <u>8</u> Supplemental MOTION to Dismiss filed by ALAN I. BARON, HAROLD DAMELIN, MARK DUBESTER. (Waldman, Ariel) (Entered: 01/15/2010)
02/18/2010	<u>11</u>	Unopposed MOTION for Leave to File <i>Transcript</i> by ALAN I. BARON, HAROLD DAMELIN, MARK DUBESTER (Attachments: # <u>1</u> Exhibit Impeachment Task Force Hearing Transcript (December 15, 2009))(Waldman, Ariel) (Entered: 02/18/2010)
02/22/2010		MINUTE ORDER granting <u>11</u> Defendants' Unopposed Motion for Leave to Lodge Transcript. It is hereby ORDERED that the defendants' motion is GRANTED. Signed by Judge Richard J. Leon on 2/22/2010. (lcrj11) (Entered: 02/22/2010)
02/23/2010	<u>12</u>	NOTICE of Lodging by ALAN I. BARON, HAROLD DAMELIN, MARK DUBESTER (Attachments: # <u>1</u> Exhibit Exhibit A - Dec. 15, 2009 Hearing Transcript)(Waldman, Ariel) (Entered: 02/23/2010)
03/15/2010	<u>13</u>	Unopposed MOTION for Leave to File <i>Supplemental Pleading</i> by ALAN I. BARON, HAROLD DAMELIN, MARK DUBESTER (Attachments: # <u>1</u> Exhibit Congressional Record Excerpt)(Waldman, Ariel) (Entered: 03/15/2010)
03/17/2010		MINUTE ORDER granting <u>13</u> Defendants' Unopposed Motion for Leave to File Supplemental Pleading. It is hereby ORDERED that leave to file is GRANTED. Signed by Judge Richard J. Leon on 3/17/2010. (lcrj11) (Entered: 03/17/2010)

03/17/2010	14	NOTICE of Filing Congressional Record dated 3/11/2010 by ALAN I. BARON, HAROLD DAMELIN, MARK DUBESTER (znmw,) (Entered: 03/18/2010)
04/07/2010	15	ORDER, In light of the defendants' supplemental pleading, which shows that the United States House of Representatives has adopted each of four Articles of Impeachment against the plaintiff G. Thomas Porteous, it is hereby ORDERED that the parties show cause why this action should not be dismissed as moot. The plaintiff shall file his memorandum of points and authorities no later than April 19, 2010. The defendants shall file their response no later than April 26, 2010. SO ORDERED. Signed by Judge Richard J. Leon on 4/5/10. (see order.) (kc) (Entered: 04/07/2010)
04/07/2010		Set/Reset Deadlines: Plaintiff's memorandum of points and authorities due by 4/19/2010. Defendants response due by 4/26/2010 (kc) (Entered: 04/07/2010)
04/19/2010	16	RESPONSE TO ORDER TO SHOW CAUSE by G. THOMAS PORTEOUS, JR re 15 Order,, (Westling, Richard) (Entered: 04/19/2010)
04/26/2010	17	RESPONSE TO ORDER OF THE COURT re 15 Order,, filed by ALAN I. BARON, HAROLD DAMELIN, MARK DUBESTER. (Attachments: # 1 Exhibit)(Waldman, Ariel) (Entered: 04/26/2010)

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In The Senate of the United States

Sitting as a Court of Impeachment

In re:)
Impeachment of G. Thomas Porteous, Jr.,)
United States District Judge for the)
Eastern District of Louisiana)

HOUSE OF REPRESENTATIVES' NOTICE OF INTENT TO INTRODUCE AT TRIAL JUDGE PORTEOUS'S TESTIMONY BEFORE THE FIFTH CIRCUIT SPECIAL COMMITTEE

Pursuant to the Senate Impeachment Trial Committee's Scheduling Order of June 21, 2010, the House of Representatives (the "House"), through its Managers and counsel, respectfully provides notice to the Senate Impeachment Trial Committee and to Judge Porteous that it will introduce as evidence Judge Porteous's immunized testimony that he provided under oath before the Fifth Circuit Special Committee on October 30, 2007.¹ In support of this notice, the House respectfully submits:

On October 29, 2007, Judge Porteous testified under oath before the Fifth Circuit Special Investigatory Committee that was hearing evidence related to his possible judicial misconduct, for purposes of determining whether Judge Porteous should be disciplined and/or whether other official actions – such as referring Judge Porteous for possible impeachment – was warranted. In connection with that hearing, Judge Porteous was

¹This Notice is filed separately from the House of Representatives' Motion to Admit Transcripts and Records from Prior Judicial and Congressional Proceedings, because the use of prior sworn testimony of third party witnesses presents different issues that the introduction into evidence of Judge Porteous's own prior sworn statements.

provided a standard compulsion order, signed by Chief Judge Edith H. Jones of the United States Court of Appeals for the Fifth Circuit. That Order stated that it was hereby:

ORDERED, in compliance with 18 U.S.C. §§ 6002-6003 and pursuant to 28 U.S.C. § 353, that the witness, the Honorable G. Thomas Porteous, Jr., shall provide testimony and other information as to all matters about which he may be interrogated in a proceeding before or ancillary to the United States Court of Appeals for the Fifth Circuit; and that no testimony or other information that he provides under this order and no information directly or indirectly derived from such testimony or other information shall be used against him in any criminal case, except in a prosecution for perjury, making a false statement, or failure to comply with this order.²

Because the Impeachment proceeding is not a “criminal case” – the only proceeding in which Judge Porteous’s immunized testimony may not be used against him – the Immunity Order does not preclude the use of Judge Porteous’s immunized Fifth Circuit testimony in the Impeachment trial. As this Senate Trial Committee has noted, in a “Disposition” signed by all twelve Senators on the Committee, “the impeachment proceeding is independent of, and not akin to, a civil or criminal proceeding.”³

In his testimony, Judge Porteous made numerous statements that are relevant to the Articles I, III and IV of the Articles of Impeachment. For example, he admitted receiving cash from attorneys Creely and Amato:

Q. When did you first start getting cash from Messrs. Amato, Creely, or their law firm?

A. Probably when I was on state bench.

²Order, In Re Matters Involving U.S. District Judge G. Thomas Porteous, Jr., Dckt. No. 07-05-351-0085 (emphasis added). That Order, as well as the various application materials, is attached as “Attachment I.”

³ Disposition of G. Thomas Porteous, Jr.’s Motion for Continuance” (June 21, 2010).

Q. And that practice continued into 1994, when you became a federal judge, did it not?

A. I believe that's correct.⁴

Judge Porteous also admitted that these transactions "occasionally" followed his assignment of curatorships to Creely, though he claimed that these transactions were not linked:

Q. Just talking about Creely and Amato and their law firm right now. You would occasionally, after sending them curatorships – and for the record, what is a – how would you describe a curatorship?

A. [Porteous] It's for an absent defendant. It could be in a variety of situations. ...

Q. And after receiving curatorships, Mr. – Messrs. Creely and/or Amato and/or their law firm would give you money, correct?

A. Occasionally.

* * *

Q. [Judge Benavides]: ... [T]here is testimony before the grand jury that there was a return in the exact same amount, minus expenses,

⁴Porteous Fifth Circuit Hearing Testimony (hereinafter "Fifth Cir. Hrg.") at 119. Judge Porteous's testimony was made "HP Exhibit 10" on the House's Exhibit list. A copy of the testimony, along with the preceding colloquy, is attached at "Attachment 2." Judge Porteous also made statements in his questioning of witnesses that are functionally admissions. For example, he asked Attorney Amato why Amato gave him money:

Q. [Porteous]: [J]ust so I'm clear, this money that was given to me, was it done because I'm a judge, to influence me, or just because we're friends?

A. [Amato]: Tom, it's because we were friends and we've been friends for 35 years. And it breaks my heart to be here.

See Amato Fifth Cir. Hrg. at 258-59 (HP Ex. 20). Judge Porteous is well aware of the significance of this testimony, and had sought, by filing an action in the United States District Court, to preclude the House from using it. Judge Porteous's determined efforts to deprive Congress of this critical evidence is described in the Judiciary Committee Report that accompanied the Articles of Impeachment at pages 10-11.

of the curatorship that was returned to you, according to one of the witnesses.

A. That's apparently what it says, I agree.

Q. Is that true or not?

A. Not – to the best of my knowledge, that is not correct.

* * *

Q. [So] if it matched the expense – the amount each time –

A. I don't –

Q. Except for expenses, that would be a coincidence?

A. I don't know if it matched each time. That's all I can tell you, Judge. I don't know.⁵

Judge Porteous further testified that he received an envelope containing approximately \$2,000 in cash from Attorney Amato when the Liljeberg case was pending:

Q. [W]hether or not you recall asking Mr. Amato for money during this fishing trip, do you recall getting an envelope with \$2,000 shortly thereafter?

A. Yeah. Something seems to suggest that there may have been an envelope. I don't remember the size of an envelope, how I got the envelope, or anything about it.

* * *

Q. [Judge Lake]: Wait a second. Is it the nature of the envelope you're disputing?

A. No. Money was received in [an] envelope.

Q. And had cash in it?

A. Yes, sir.

⁵Porteous Fifth Cir. Hrg. at 130-33 (emphasis added).

Q. And it was from Creely and/or –

A. Amato.

Q. Amato?

A. Yes.

Q. And it was used to pay for your son's wedding.

A. To help defray the cost, yeah.

Q. And was used --

A. They loaned – my impression was it was a loan.

Q. And would you dispute that the amount was \$2,000?

A. I don't have any basis to dispute it.⁶

Judge Porteous made numerous other statements that are highly probative to Article III (bankruptcy) as well.⁷

Not only is there no legal impediment exists to the House's use of this highly relevant evidence, it would constitute a miscarriage of the fact-finding process if the Senate were to be kept in the dark about Judge Porteous's own statements concerning the conduct at issue. For example, only Judge Porteous and Mr. Amato have first-hand knowledge of the money that Mr. Amato gave Judge Porteous when the Liljeberg case was pending, and, presumably, if Judge Porteous's testimony were not admitted, he would be free to claim the event never happened (or cannot be proven), even though he admitted that conduct under oath. Though the Federal Rules of Evidence do not pertain

⁶Porteous Fifth Cir. Hrg. at 136-37 (Ex. 10).

⁷The House is willing to designate the entirety of Judge Porteous's testimony for admission to avoid any claim that it is picking and choosing testimony out of context.

to Impeachment proceedings, we note that prior testimony of a party would be admissible in any Federal trial.⁸

Finally, the introduction of Judge Porteous's prior testimony is consistent with Senate Impeachment precedent. In the Claiborne Impeachment, the House moved the Senate to "accept prior admissions of Judge Claiborne as substantive evidence."⁹ The Claiborne Impeachment Committee granted the motion, and Judge Claiborne's prior testimony was in fact admitted in the impeachment trial.¹⁰

WHEREFORE, the House provides notice of its intent to introduce Judge Porteous's Fifth Circuit Hearing testimony.

⁸See Federal Rules of Evidence 801(d)(2) (a statement does not constitute excludable hearsay if "[t]he statement is offered against a party and is (A) the party's own statement....").

⁹See [The House of Representatives'] Motion to Accept Prior Admissions of Judge Claiborne as Substantive Evidence, In re: Impeachment of Judge Harry E. Claiborne, reprinted in Report of the Senate Impeachment Trial Committee, Hearings before the Senate Impeachment Trial Committee, United States Senate, S. Hrg. 99-812, 99th Cong., 2d Sess. (1986) at 389 [hereinafter "Judge Claiborne Senate Impeachment Report"].

¹⁰Proceedings of the Claiborne Impeachment Trial Committee, Sept. 10, 1986, printed in Judge Claiborne Senate Impeachment Report at 110 (statement of Sen. Mathias). The Motion was granted in a summary fashion. Judge Claiborne was permitted leave to raise particular objections to testimony that the House sought to use, though it does not appear that he in fact made any. At trial, when the House Managers sought to introduce Judge Claiborne's testimony, Judge Claiborne's counsel stated: "Mr. Chairman, it is our understanding that the ruling has already been made and that the statements attributed to Judge Claiborne are in fact admissible." Proceedings of the Claiborne Impeachment Trial Committee, Sept. 16, 1986, printed in Judge Claiborne Senate Impeachment Report at 622 (statement of Oscar Goodman, Esq.).


Respectfully submitted,

THE UNITED STATES HOUSE OF REPRESENTATIVES


Adam Schiff, Manager

By


Bob Goodlatte, Manager


Alan I. Baron
Special Impeachment Counsel

Managers of the House of Representatives: Adam B. Schiff, Bob Goodlatte, Zoe Lofgren, Henry C. "Hank" Johnson, F. James Sensenbrenner, Jr.

July 21, 2010

Attachment One

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

IN RE MATTERS INVOLVING U.S.	:	<u>DECRET</u>
DISTRICT JUDGE G. THOMAS	:	<u>MISC. NO. 07-05-357-0085</u>
ORTEOUS, JR.	:	
	:	<u>UNDER SEAL</u>

APPLICATION FOR COMPULSION ORDER

COMES NOW the United States of America, by and through applicant Daniel A. Petalas, Trial Attorney, Public Integrity Section, Criminal Division, United States Department of Justice, and makes an application to this Court, pursuant to 18 U.S.C. §§ 6002-6003, for an order to compel the witness, the Honorable G. Thomas Porteous, Jr., to testify and provide other information as to all matters about which he may be interrogated in a proceeding before or ancillary to the United States Court of Appeals for the Fifth Circuit. In support of this application, applicant states the following:

1. The witness, the Honorable G. Thomas Porteous, Jr., has been subpoenaed to testify in a proceeding before the Special Committee of the Judicial Council of the United States Court of Appeals for the Fifth Circuit beginning Monday, October 29, 2007. Under 28 U.S.C. § 353, the Special Committee is obligated by statute to "conduct an investigation as extensive as it considers necessary."

2. The witness is likely to invoke his privilege against self-incrimination and refuse to provide testimony and other information when called to testify on October 29, 2007.

3. In the judgment of the undersigned, the witness' testimony and information are necessary to the public interest, and applicant therefore requests an order to compel the witness, when granted immunity, to testify and to provide information.

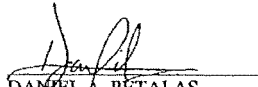
4. As shown in the attached letter of September 24, 2007, this application is made with the approval of Alice S. Fisher, Assistant Attorney General, Criminal Division, United States Department of Justice, in compliance with 18 U.S.C. §§ 6002-6003 and 28 C.F.R. 0.175(a).

WHEREFORE, applicant requests an order to compel the witness, the Honorable G. Thomas Porteous, Jr., to testify and provide other information as to all matters about which he may be interrogated in a proceeding before or ancillary to the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

WILLIAM M. WELCH II
Chief, Public Integrity Section

BY:


DANIEL A. PETALAS
Trial Attorney
Public Integrity Section
Criminal Division
U.S. Department of Justice
1400 New York Ave., NW, Suite 12100
Washington, D.C. 20005
(202) 514-1412

SEP-25-2007 12:40

P.02/02



U.S. Department of Justice

Criminal Division

Office of the Assistant Attorney General

Washington, DC 20530-0001

SEP 24 2007

Mr. William M. Welch II
Chief
Public Integrity Section
Washington, D.C. 20530

Attention: Daniel A. Petalas
Trial Attorney

Re: In re Matters Involving U.S. District Judge G. Thomas Porteous, Jr.

Dear Mr. Welch:

Pursuant to the authority vested in me by 18 U.S.C. § 6003(b) and 28 C.F.R. § 0.175(a), I hereby approve your request for an order pursuant to 18 U.S.C. §§ 6002-6003 requiring Gabriel Thomas Porteous, Jr. to give testimony or provide other information in the proceedings before the Special Committee of the United States Court of Appeals for the Fifth Circuit and in any further proceedings resulting therefrom or ancillary thereto.

Sincerely,

Alice S. Fisher
Assistant Attorney General

BRUCE C. SWARTZ
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

SC00846

TOTAL P.02

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

IN RE MATTERS INVOLVING U.S. :
DISTRICT JUDGE G. THOMAS :
PORTEOUS, JR. :

DOCKET
MISC. NO. *07-05-351-0085*

UNDER SEAL

ORDER

This matter coming to be heard upon the application of the United States of America, by and through applicant Daniel A. Petalas, Trial Attorney, Public Integrity Section, Criminal Division, United States Department of Justice, for an order compelling the witness, the Honorable G. Thomas Porteous, Jr., to testify and provide other information as to all matters about which he may be interrogated in a proceeding before or ancillary to the United States Court of Appeals for the Fifth Circuit, it is hereby:

ORDERED, in compliance with 18 U.S.C. §§ 6002-6003 and pursuant to 28 U.S.C. § 353, that the witness, the Honorable G. Thomas Porteous, Jr., shall provide testimony and other information as to all matters about which he may be interrogated in a proceeding before or ancillary to the United States Court of Appeals for the Fifth Circuit; and that no testimony or other information that he provides under this order and no information directly or indirectly derived from such testimony or other information shall be used against him in any criminal case, except in a prosecution for perjury, making a false statement, or failure to comply with this order.

SC00847

ORDERED, in accordance with Rule 6(e) of the Federal Rules of Criminal Procedure, that the United States' application for immunity be sealed, except that a certified copy shall be provided to Daniel A. Petalas, Trial Attorney, Public Integrity Section, Criminal Division, U.S. Department of Justice.

DATED this 5th day of October, 2007.


UNITED STATES CIRCUIT JUDGE

Attachment Two

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MR. WOODS: We would call as our next witness Judge

10:36

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Porteous.

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JUDGE PORTEOUS: And, Judge, on that issue, I just on Friday realized I was going to be given immunity and just hadn't had time to adequately contemplate the testimony. I mean, I've been working on everything else.

I would simply ask that I be given through today

17:36 1 to at least get my thoughts together before I am compelled to
2 testify. Mr. Woods had that immunity notice; and I just saw it
3 today, just saw it for the first time today.
4 MR. WOODS: It was provided on Friday, your Honor.
10:36 5 JUDGE PORTEOUS: Yeah, on Friday. I understand. No.
6 The log was provided on Friday.
7 MR. WOODS: Right.
8 JUDGE PORTEOUS: The document was not provided on
9 Friday, and you know that.
10:37 10 MR. WOODS: That's correct.
11 CHIEF JUDGE JONES: All right, sir. We're not going
12 to go crosswise with each other. Thank you very much.
13 JUDGE PORTEOUS: I'm sorry, Judge.
14 CHIEF JUDGE JONES: Mr. Finder will to respond.
10:37 15 MR. FINDER: Yes, thank you, Judge. Under the rules
16 under which we're operating, Rule 10C, Special Committee
17 Witness.
18 CHIEF JUDGE JONES: You want to speak up there?
19 MR. FINDER: Yeah, I'm sorry. I'll use the podium.
10:37 20 Is this better?
21 CHIEF JUDGE JONES: Yes.
22 MR. FINDER: "All persons who are believed to have
23 substantial information will be called as Special Committee
24 witnesses, including the complainant and the subject judge."
10:37 25 So, I think that there is no surprise here. It's

10:37 1 in the rules, which were provided a long, long time ago.
 2 JUDGE PORTEOUS: I don't doubt that that's what the
 3 rules say, your Honor. I'm not taking issue with that. I'm
 4 taking issue with the fact that it's the first time I've been
 10:37 5 given immunity, without ever seeing the document.
 6 CHIEF JUDGE JONES: Well, with --
 7 JUDGE PORTEOUS: I'm only asking for the rest of the
 8 day.
 9 CHIEF JUDGE JONES: -- immunity is better than non
 10:38 10 immunity, sir. Continuance is denied. You may take the stand.
 11 JUDGE PORTEOUS: All right.
 12 CHIEF JUDGE JONES: Thank you.
 13 JUDGE LAKE: Raise your right hand to be sworn.
 14 You do solemnly swear that the testimony you
 10:38 15 shall give in this proceeding will be the truth, the whole
 16 truth, and nothing but the truth, so help you God?
 17 JUDGE PORTEOUS: I do.
 18 GABRIEL THOMAS PORTEOUS, JR., DULY SWORN, TESTIFIED:
 19 DIRECT EXAMINATION
 10:38 20 BY MR. FINDER:
 21 Q. Judge Porteous, a little background information, please.
 22 You were a judge in the 24th Judicial District
 23 Court in the State of Louisiana from approximately 1984 to
 24 October 1994. Is that correct?
 10:38 25 A. That's correct.

Cheryl K. Barron, CSR, CM, FCRR

713.250.5585

10:38 1 Q. And prior to taking that judicial office, you were employed
2 as special counsel to the office of the Louisiana Attorney
3 General from approximately 1971 to approximately 1973. Is that
4 correct?

10:38 5 A. I believe that's correct.

6 Q. You were also a prosecutor and assistant district attorney
7 of Jefferson Parish, Louisiana, from approximately 1973 to
8 1975. Is that correct?

9 A. I'm sorry. Would you -- I'm sorry.

10:39 10 Q. I'm sorry. 1973 to approximately 1975?

11 A. I was what? I'm sorry.

12 Q. An assistant district attorney of Jefferson Parish?

13 A. I was an assistant DA from -- until I took the state bench.

14 Q. Okay. So, I'm incorrect, then?

10:39 15 A. I was an assistant DA from some -- some period of time,
16 probably '73 through '84.

17 Q. Okay. And you were also city attorney for Harahan,
18 Louisiana, from 1982 to 1984?

19 A. That sounds correct.

10:39 20 Q. Okay. You were nominated by the President of the United
21 States on August 25th, 1994, to become a United States district
22 judge. Is that correct?

23 A. Right.

24 Q. You were confirmed by the Senate on October 7th, 1994; and
10:39 25 at that time received your commission as a US district judge on

10:39 1 October 11th. Is that correct?
2 A. That is correct.
3 Q. And from that date to the present, you have been bound by
4 the Code of Conduct for United States Judges, correct?
10:40 5 A. Correct.
6 MR. FINDER: Your Honors, I'm going to be walking up
7 and back to use the Elmo; so, that's the reason I'm going to be
8 a little mobile here.
9 THE WITNESS: Put it right here if you want.
10:40 10 MR. FINDER: Okay. Thank you, sir.
11 BY MR. FINDER:
12 Q. Judge Porteous, I've marked for identification --
13 JUDGE BENAVIDES: Mr. Finder, you're going to have to
14 speak a little louder since you'll have your back to the
10:40 15 reporter.
16 MR. FINDER: Oh, forgive me. All right.
17 BY MR. FINDER:
18 Q. I've marked for identification purposes only as Exhibit 80,
19 a book called "Getting Started as a Federal Judge."
10:40 20 Judge Porteous, I'm going to -- this book, as
21 you'll see, bears a date of July of 1997, approximately three
22 years after you took the bench, correct?
23 A. It says that, yes.
24 Q. After you received your commission, Judge Porteous, you
10:41 25 took an oath of office, correct?

10:41 1 A. Yes.
2 Q. And that's a statutory oath, is it not?
3 A. Correct.
4 Q. I'd ask you to read along with me.
10:41 5 A. I cannot -- well, go ahead.
6 Q. Okay. Well, let's try and make it --
7 A. Just read it. I can --
8 Q. Okay. "I, your name, do solemnly swear or affirm that I
9 will administer justice without respect to persons and do equal
10:41 10 right to the poor and to the rich and that I will faithfully
11 and impartially discharge or perform all the duties incumbent
12 on me as a United States District Judge under the Constitution
13 and laws of the United States and that I will support and
14 defend the Constitution of the United States against all
10:41 15 enemies, foreign and domestic, that I will bear true faith and
16 allegiance to the same, that I take this obligation freely,
17 without any mental reservation or purpose of evasion, and that
18 I will well and faithfully discharge the duties of the office
19 of which I am about to enter, so help me God."
10:42 20 Sir, is that the oath that you took?
21 A. Yes, it is.
22 Q. Are you familiar with this book or an earlier edition of
23 it, sir?
24 A. I know we all have them in our chambers. I don't know that
10:42 25 I can tell you I've read every page of it.

10:42 1 Q. Okay. Let's go through a few provisions.
2 MR. FINDER: Can your Honors see that?
3 CHIEF JUDGE JONES: Barely.
4 MR. FINDER: Let me --
10:42 5 JUDGE LAKE: It's all right. No, that's better.
6 MR. FINDER: It's a little temperamental.
7 THE WITNESS: Oh, now that's much better.
8 MR. FINDER:
9 BY MR. FINDER:
10:42 10 Q. Okay. Your Honor, would you agree or disagree with these
11 statements, "New judges should review the ethical guidelines
12 set forth in the Code of Conduct for United States Judges and
13 the financial disclosure requirements of the Ethics Reform Act
14 of 1989"?
10:43 15 A. It says that.
16 Q. Do you agree with that?
17 A. Yes.
18 Q. Do you agree that once judges are assigned cases they have
19 a continuing obligation to examine periodically their own
10:43 20 personal and fiduciary financial interests and those of their
21 spouses and minor children?
22 A. I agree that's quoting what's in the paragraph.
23 Q. I know it's in there, but do you agree with what it says?
24 A. Yeah.
10:43 25 Q. Do you agree that, as a general matter, although judges are

10:43 1 not required to sever all ties to former clients and
2 colleagues, they clearly must be vigilant if they continue such
3 relationships?

4 A. I agree with that.

10:43 5 Q. Do you agree, under Canon 3 of the code of conduct, which
6 addresses a judge's obligation to perform the duties of the
7 judicial office impartially and diligently, requires judges to
8 disqualify themselves in any proceeding in which their
9 impartiality might be reasonably questioned?

10:44 10 A. I agree with that.

11 Q. Do you agree with Canon 3C of the code of conduct, that it
12 addresses the general issue of disqualification and states that
13 judges must disqualify themselves from all cases in which their
14 impartiality might be reasonably questioned?

10:44 15 A. I agree.

16 Q. And, Judge Porteous, do you agree that all new judges
17 should be mindful that they continue to be the subject of
18 public attention in their activities after their appointment to
19 the bench, thus, they should consider carefully whether

10:44 20 participation in outside activities impinges upon their
21 performance of their judicial responsibilities; as noted in
22 commentary to Canon 2A of the Code of Conduct for US Judges,
23 that judges must accept freely and willingly restrictions on
24 their personal conduct and activities that might be viewed as
10:44 25 burdensome by the ordinary citizen?

10:44 1 A. I agree.
2 Q. Sir, I'm going to show you what's Exhibit 18, which has
3 been offered and accepted, the Code of Conduct for United
4 States Judges, which I believe you said you're familiar with,
10:45 5 correct?
6 A. Yes.
7 JUDGE BENAVIDES: Speak up.
8 MR. FINDER: I'm sorry. Did I do it again?
9 BY MR. FINDER:
10:46 10 Q. The question was you are familiar with Exhibit 18, which is
11 the Code of Conduct for US Judges. Correct?
12 A. Yes, sir.
13 Q. And this code applies to district judges, correct?
14 A. Right.
10:46 15 Q. And the judicial conference has authorized the Committee on
16 the code of conduct to render advisory opinions concerning the
17 application and interpretation of the code when requested by a
18 judge to whom the code applies.
19 Have you ever asked that Committee for an
10:46 20 advisory opinion?
21 A. No.
22 Q. Are you familiar with Canon 1, your Honor, that a judge
23 should uphold the integrity and independence of the judiciary?
24 A. Yes.
10:46 25 Q. And that an independent and honorable judiciary is

10:46 1 indispensable to justice in our society?
2 A. Yes.
3 Q. There's a commentary here, your Honor, "Deference to the
4 judges and rulings of courts depends upon public confidence and
10:46 5 the integrity and independence of judges."
6 Skipping a line, "Although judges should be
7 independent, they should comply with the law, as well as the
8 provisions of this code."
9 Do you have any dispute with that statement --
10:47 10 those statements?
11 A. No, sir.
12 Q. Canon 2, "A judge should avoid the appearance of
13 impropriety."
14 MR. FINDER: Can you try and make this -- can you all
10:47 15 see?
16 BY MR. FINDER:
17 Q. "A judge should respect and comply with the law and should
18 act at all times in a manner that promotes public confidence in
19 the integrity and impartiality of the judiciary." Do you agree
10:47 20 with that statement, sir?
21 A. Yes, sir.
22 Q. Canon 2A, which you can read, was fairly summarized in the
23 book we just talked about. Do you agree with that, about
24 accepting -- that judges must accept certain restrictions in
10:47 25 their personal lives once they take the bench?

10:48 1 A. It seems to say that, yes.
2 JUDGE LAKE: Sir, I didn't hear your answer.
3 THE WITNESS: It seems to say that.
4 I'm sorry, Judge Lake.
10:48 5 JUDGE LAKE: Thank you.
6 BY MR. FINDER:
7 Q. And, then, in Canon 2A, a commentary, "Actual improprieties
8 under this standard include violations of law, court rules, or
9 other specific provisions of this code."Do you agree with that?
10:48 10 A. Yes, sir.
11 Q. Canon 3 says, "A judge should perform the duties of the
12 office impartially and diligently."
13 Can you follow along with me to read this?
14 "The judicial duties of a judge takes precedence
10:48 15 over all other activities. In performing the duties prescribed
16 by law, the judge should adhere to the following standards."
17 And, then, let's move over to Section C, under
18 Disqualification. "A judge shall -- shall disqualify himself
19 or herself in a proceeding in which the judge's impartiality
10:49 20 might reasonably be questioned."
21 A. Right.
22 Q. Okay. And then D, Remittal of Disqualification, "A judge
23 disqualified by the terms of 3C(1) may, instead of withdrawing
24 from the proceeding, disclose on the record the basis of
10:49 25 disqualification. If the parties and their lawyers, after such

re: 49 1 disclosure and an opportunity to confer outside of the presence
2 of the judge, all agree, in writing or on the record, that the
3 judge should not be disqualified and the judge then is willing
4 to participate, the judge may participate in the proceeding.
10:49 5 This agreement shall be incorporated in the record of the
6 proceeding."

7 Did I read that accurately?

8 A. Yes.

9 Q. Were you familiar with this prior to the reading of this?

10:49 10 A. Yes.

11 Q. Okay. Canon 5, "A judge should regulate extra-judicial
12 activities to minimize the risk of conflict with judicial
13 duties."

14 Section C, A judge should -- under Financial
10:50 15 Activities, "A judge should refrain from financial and business
16 dealings that tend to reflect adversely on the judge's
17 impartiality, interfere with the proper performance of judicial
18 duties, exploit the judicial position, or involve the judge in
19 frequent transactions with lawyers or other persons likely to
10:50 20 come before the court on which the judge serves."

21 Were you aware of this provision before reading
22 it today?

23 A. Yes, sir.

24 Q. Is that a "yes," sir?

10:50 25 A. Yes, sir. I'm sorry.

10:50 1 Q. Okay. "A judge should not solicit or accept anything of
2 value from anyone seeking official action from or doing
3 business with the court or other entity served by the judge or
4 from anyone whose interests may be substantially affected by
10:51 5 the performance or nonperformance of official duties."Did I
6 read that accurately?

7 A. You did.

8 Q. "Except that a judge may accept a gift as permitted by the
9 Judicial Conference gift regulations. A judge should endeavor
10:51 10 to prevent a member of the judge's family residing in the
11 household from soliciting or accepting a gift except to the
12 extent that a judge would be permitted to do so by the Judicial
13 Conference gift regulations."

14 Did I read that accurately?

10:51 15 A. You did.

16 Q. And were you aware of this provision before reading it in
17 court today?

18 A. In general, yes.

19 Q. And for purposes -- under (5), "For purposes of this
10:51 20 section, 'members of the judge's family residing in the judge's
21 household' means any relative of a judge by blood or marriage
22 or person treated by a judge as a member of the judge's family,
23 who resides in the judge's household."

24 Did I read that correctly?

10:52 25 A. Yes, sir.

10:52 1 Q. And Number 6, "A judge should report" --
2 A. I can't see that.
3 Q. Oh, I'm sorry. Can you read that?
4 A. Yes.
10:52 5 Q. "A judge should report the value of any gift, bequest,
6 favor, or loan as required by the statutes or by the Judicial
7 Conference of the United States."
8 Did I read that correctly?
9 A. You absolutely did.
10:52 10 Q. And were you aware of that provision before?
11 A. Yes, sir.
12 Q. Under commentary to Rule 5, Canon -- it says, "Canon 5C.
13 Canon 3 requires a judge to disqualify in any proceeding in
14 which the judge has a financial interest, however small;
10:52 15 Canon 5 requires a judge to refrain from engaging in business
16 and from financial activities that might interfere with the
17 impartial performance of the judge's judicial duties; Canon 6
18 requires a judge to report all compensation received for
19 activities outside the judicial office."
10:52 20 Did I read that accurately?
21 A. You did.
22 Q. And were you aware of that prior to today?
23 A. I'm sure I was. I'm sure I was. I'm sorry.
24 Q. Canon 6, "A judge should regularly file reports of
10:53 25 compensation received for law-related and extra-judicial

10:53 1 activities."

2 Section C, "Public Reports, A judge should make

3 required financial disclosures in compliance with applicable

4 statutes and Judicial Conference regulations and directives."

10:53 5 Did I read that accurately, sir?

6 A. You did.

7 Q. And you were aware of that prior to today, correct?

8 A. Yes, sir.

9 Q. And, in fact, you have filed reports with the

10:53 10 Administrative Office of the United States courts, haven't you?

11 A. I have.

12 Q. Now, these canons of ethics for judges, that I read to you,

13 that you said you are familiar with, were not unlike the canons

14 of ethics that you were bound by as a state district judge in

10:54 15 Louisiana, correct?

16 A. I believe that's correct.

17 JUDGE BENAVIDES: Counsel, can I interrupt you just

18 for a little while --

19 MR. FINDER: Yes, sir.

10:54 20 JUDGE BENAVIDES: -- and question Judge Porteous?

21 It struck me that we discussed immunity, and it

22 struck me that Judge Porteous was advised that he would be

23 granted immunity. And it struck me that this is going on, I

24 think, in the belief that, but for that, he would not be

10:54 25 testifying. But we have not, in the record, actually presented

10:54 1 his testimony with the understanding -- with the explicit
2 understanding that immunity has been extended. And I don't
3 want to get down the road where we don't have that in the
4 record. But out of fairness, it would seem that is the reason
10:54 5 that Judge Porteous is testifying.

6 So, for the record, you are proceeding with the
7 request and asking for immunity for Judge Porteous?

8 MR. FINDER: You're absolutely correct, your Honor. I
9 do have the actual original application for compulsion as well
10:55 10 as the order of compulsion. Judge Porteous has a true and
11 accurate copy, but I'm happy to give him the originals.

12 THE WITNESS: I've seen it, if it's the same one you
13 gave me a copy of.

14 JUDGE BENAVIDES: I just want to get that straight
10:55 15 because there is some formality usually associated with taking
16 the Fifth Amendment.

17 MR. FINDER: Right. Right.

18 JUDGE BENAVIDES: But we've been going a long time on
19 that basis, and I didn't want to have any misunderstanding.

10:55 20 MR. FINDER: As long as you bring it up, your Honor, I
21 do need, without -- hopefully, without sounding didactic, I do
22 need to make certain that the witness knows that, while this is
23 a grant of use immunity coextensive with his Fifth Amendment
24 rights, it would not prevent him any kind of immunity from
10:55 25 false statement or perjury, just as in any case under 6001 and

10:55 1 6002 of the United States Code.
2 JUDGE BENAVIDES: All right.
3 CHIEF JUDGE JONES: And you're aware of that, Judge
4 Porteous?
10:56 5 THE WITNESS: Yes, ma'am.
6 MR. FINDER: May I proceed, your Honors?
7 CHIEF JUDGE JONES: Yes, sir.
8 MR. FINDER: What exhibit number is the Louisiana Code
9 of Judicial Conduct? 86?
10:56 10 THE WITNESS: Can I just get a cup of water real
11 quick?
12 CHIEF JUDGE JONES: Sure.
13 JUDGE BENAVIDES: Yes, Judge, you can bring the
14 pitcher with you.
10:56 15 THE WITNESS: Oh, thank you. I don't want to knock
16 something over.
17 MR. FINDER: I may have misspoke. It's Exhibit 85.
18 Forgive me.
19 THE WITNESS: The list, other than this morning, that
10:57 20 I was provided, only went to Exhibit 84 as of Friday.
21 MR. WOODS: Right, and I gave you the updated list
22 this morning.
23 THE WITNESS: Well, it's in the box somewhere.
24 MR. WOODS: No. It's on top of the box.
10:57 25 THE WITNESS: Maybe it is.

ru:57 1 Okay. All right.

2 BY MR. FINDER:

3 Q. Mr. Porteous, I'm calling your attention to the Louisiana
4 Code of Judicial Conduct, Canon 1. I believe you testified
10:57 5 you're familiar with these.

6 It states, "The Judge shall uphold the integrity
7 and independence of the judiciary. An independent and
8 honorable judiciary is indispensable to justice in our
9 society."

10:57 10 And without taking up all the Court's time, I
11 believe you -- will you agree with me that this language is
12 almost verbatim of the language we just read from the canons of
13 federal judicial --

14 A. It seems to be. Certainly similar.

10:58 15 Q. Very similar.

16 Secondly, Canon 2, "A judge shall avoid
17 impropriety and the appearance of impropriety in all
18 activities."

19 And I believe that language is also very similar
10:58 20 to what we just read, correct?

21 A. Yes.

22 Q. Canon 3, "A judge shall perform the duties of office
23 impartially and diligently."

24 And, then, moving on to page -- to Section C of
10:58 25 that rule, which in the Louisiana version is titled

10:58 1 "Recusation, To Recuse."

2 It states, "A judge shall disqualify himself or
3 herself in a proceeding to which the judge's impartiality might
4 reasonably be questioned and shall disqualify himself or
10:58 5 herself in a proceeding in which disqualification is required
6 by law or applicable Supreme Court rule."

7 Did I read that accurately?

8 A. You did.

9 Q. And you are -- and these were the rules that you were bound
10:58 10 by as a judge in Louisiana, correct?

11 A. I believe that's correct.

12 Q. Canon 5, titled Extra-Judicial Activities, Section C, "A
13 judge shall refrain from financial and business dealings that
14 tend to reflect adversely on the judge's impartiality, interfere
10:59 15 with the proper performance of judicial duties, exploit the
16 judge's judicial position, or involve the judge in frequent
17 transactions with lawyers or persons likely to come before the
18 court on which he or she serves."

19 Did I read that accurately?

10:59 20 A. You did.

21 Q. That's also similar to the canons of federal ethics, isn't
22 it?

23 A. It is.

24 Q. Canon 6, "A judge shall not accept compensation or gifts
11:00 25 for quasi-judicial and extra-judicial activities, only under

1T:00 1 restricted circumstances."
2 Section C, "Gifts. A judge, a judge's spouse, or
3 member of the judge's immediate family residing in the judge's
4 household shall not accept any gifts or favors which might
11:00 5 reasonably appear as designed to affect the judgment of the
6 judge or influence the judge's official conduct."
7 Did I read that accurately?
8 A. You did.
9 Q. And then there's also the Louisiana version of annual
11:00 10 financial reporting, correct?
11 A. Yes.
12 Q. Okay. And I believe the amount was raised effective 2006.
13 But even when you were a judge, it was a lower amount, correct?
14 A. I believe that's correct.
11:00 15 Q. The point is, Judge Porteous, in the more than two decades
16 that you have been a judge, whether state or federal, you have
17 been bound by very, very similar terms of judicial ethics
18 canons, correct?
19 A. Yes, somewhat, of course.
11:01 20 Q. Judge Porteous, you were married to Camella Porteous, who
21 passed away December 22nd, 2005, correct?
22 A. Yes, sir.
23 Q. How long were you married, approximately?
24 A. Got married in '69. Thirty-six years.
11:01 25 Q. Isn't it true, Judge Porteous, that on March 28th, 2001,

...01 1 you and your wife filed a voluntary Chapter 13 bankruptcy
2 petition in this district, the Eastern District of Louisiana,
3 in Docket Number 01-12363?
4 A. I know we filed, and I'm assuming that is the date number
11:01 5 and the record number.
6 Q. I'll show you the actual petition.
7 A. That's okay. I mean --
8 Q. And is it also true that the trustee assigned to the file
9 was SJ Beaulieu -- spelled B-E-A-U-L-I-E-U -- Jr.?
11:02 10 A. Correct.
11 Q. And your lawyer at the time was Claude C. Lightfoot --
12 spelled L-I-G-H-T-F-O-O-T -- Jr. Is that correct?
13 A. Correct.
14 Q. And you filed -- I'll show you what's part of Exhibit 1,
11:02 15 Bates Number SC122.
16 A. What's the Bates number? I'm sorry.
17 Q. SC12 -- 00122. One of these days I'll get the hang of
18 this.
19 A. That's fine.
11:02 20 Q. This is a voluntary petition that you filed. Isn't that
21 correct, Judge?
22 And please look it over.
23 A. It appears to be.
24 Q. Okay. Under "Name of Debtor," it says "Ortous" -- spelled
11:03 25 O-R-T-O-U-S -- comma, G, period, T, period, correct?

1T:03 1 A. It does.
2 Q. And under "Name of Joint Debtor, Spouse," it's "Ortous" --
3 O-R-T-O-U-S -- comma, capital C, period, capital A, period,
4 correct?
11:03 5 A. That's correct.
6 Q. It has as the street address of the debtor PO Box 1723 in
7 Harvey, Louisiana, ZIP Code 70059-1723, correct?
8 A. Yes, sir.
9 Q. And the case number, the docket number, 01-12363, which I
11:03 10 believe I mentioned a few moments ago, correct?
11 A. I believe you did.
12 Q. Let me show you, Judge Porteous -- I'll come back to that.
13 Do you recognize this as an application for a
14 PO box, Judge Porteous?
11:04 15 It's SC exhibit -- Special Committee Exhibit 23,
16 Bates Number SC00599.
17 Do you recognize that, sir?
18 A. Yeah. If you tell me that's what it is, I agree. I
19 mean --
11:04 20 Q. Well, but I can't testify; so, I have to ask you those
21 questions.
22 A. I'm assuming it is an application for a post office box. I
23 can't read the print, but I have no reason to doubt what you
24 represent. I'm not trying to take issue. I agree.
11:04 25 Q. I know. I'm trying to be fair.

11:04 1 There's a signature here. Do you recognize that
2 signature?
3 A. That's mine.
4 Q. That is your signature.
11:04 5 And it's dated March 20th, 2001, correct?
6 A. It is.
7 Q. Now, March 20th, 2001, was -- and we'll get to this in a
8 moment -- just about a week before you filed your Chapter 13,
9 correct?
11:05 10 A. What was the date?
11 Yeah. I agree. I mean --
12 Q. All right. And on your PO box request, you have an address
13 here, 4801 --
14 A. "Neyrey."
11:05 15 Q. -- Neyrey -- N-E-Y-R-E-Y -- Drive in Metairie, Louisiana.
16 That's your residence, correct?
17 A. That's correct.
18 Q. So, going back to Exhibit 1, the voluntary petition -- oh,
19 wrong one -- the PO box that you have on here, you put in lieu
11:05 20 of your home address, correct?
21 A. That's correct.
22 Q. Now, this voluntary petition --
23 MR. WOODS: Larry, it's off.
24 MR. FINDER: Oh, thank you.
11:06 25 Can your Honors read that?

1 BY MR. FINDER:
2 Q. "Signature of debtor, individual" -- tell me if I'm reading
3 this accurately -- "I declare under penalty of perjury that the
4 information provided in this petition is true and correct."
11:06 5 And there are two signatures with the date 3-28-01, correct?
6 A. That's correct.
7 Q. And 3-28-01 was about eight days after the PO box was taken
8 out, correct?
9 A. That's correct.
11:06 10 Q. Your name is not Ortous, is it?
11 A. No, sir.
12 Q. Your wife's name is not Ortous?
13 A. No, sir.
14 Q. So, those statements that were signed -- so, this petition
11:06 15 that was signed under penalty of perjury had false information,
16 correct?
17 A. Yes, sir, it appears to.
18 Q. I'll show you something else on this petition, Judge
19 Porteous. There's a list of unsecured creditors, and I'm
11:07 20 referring now to Bates Number Page SC00126.
21 A. All right.
22 Q. Regions Bank?
23 A. Yes, sir.
24 Q. That's a bank you've done business with?
11:07 25 A. Yeah, I did some business with them.

11:07 1 Q. Right. And Regions Bank is on this voluntary petition,
2 correct?
3 A. I assume that's the petition, yes, sir. I mean --
4 Q. Well, we'll go back to the first page.
11:07 5 A. Okay.
6 Q. Voluntary petition?
7 A. All right. Yeah, it's on there.
8 Q. But if Regions Bank or any other unsecured creditor such as
9 these were to get word that a GT Ortous had filed bankruptcy,
11:08 10 they wouldn't necessarily know it was you, would they, unless
11 they ran the Social Security number?
12 A. If they had have got notice, you're correct.
13 Q. Now, let's jump ahead a little bit. Still in Exhibit 1 --
14 A. All right.
11:08 15 Q. -- and I'm going to refer you and the Court to Bates
16 Number SC120. This is an amended voluntary petition, is it
17 not?
18 A. Yes, sir.
19 Q. This time the name of the debtor is Gabriel T. Porteous,
11:08 20 Jr. That's you, correct?
21 A. Yes, sir.
22 Q. And Carmella A. Porteous, the joint debtor, your wife,
23 correct, sir?
24 A. Yes, sir.
11:08 25 Q. This time the address is 4801 Neyrey Drive, Metairie,

1 Louisiana, correct?

2 A. Yes, sir.

3 Q. This petition -- blow this up a little bit; that's about as
4 clear as I can make it -- was signed by you and your wife on
11:09 5 April 9th. Those are your signatures, correct?

6 A. Yes, sir.

7 Q. And the date is April 9th, correct?

8 A. Yes, sir.

9 Q. And your attorney's name, Claude Lightfoot, is on there,
11:09 10 also?

11 A. Right.

12 Q. So, between -- strike that.

13 After your voluntary -- your amended petition was
14 filed, there was an order of recusal entered in your bankruptcy
11:09 15 case, in the matter of Gabriel T. Porteous, Jr. and Carmella A.
16 Porteous, an order of recusal -- I'm going to have to -- and
17 the order, which was dated June 1st, 2001, says it is ordered
18 that the three judges of the US Bankruptcy Court for the
19 Eastern District of Louisiana, naming the three judges, are
11:10 20 hereby recused from the case, correct?

21 A. Yes, sir.

22 Q. And then procedurally, your case was temporarily assigned
23 to Judge William R. Greendyke on assignment to the Eastern
24 District of Louisiana, correct?

11:10 25 A. Right.

11:10 1 Q. And that's the same cause number?
2 A. Yes, sir.
3 Q. Signed by then Chief Judge Carolyn Dineen King of the Fifth
4 Circuit, correct?
11:10 5 A. Right.
6 Q. I don't believe I stated the date. Judge Greendyke was
7 assigned to this -- at least the order of Judge King assigns
8 Judge Greendyke June 4th, 2001. Is that accurate?
9 A. Yes, sir.
11:11 10 Q. Judge Porteous, we've already talked about Claude Lightfoot
11 being your attorney.
12 Jacob J. Amato, do you know Jacob Amato, Jake
13 Amato?
14 A. Absolutely.
11:11 15 Q. He is a lawyer, correct?
16 A. Yes, sir.
17 Q. And he is a friend of yours. Isn't that correct?
18 A. Yes, sir.
19 Q. Warren A. Forstall, Jr., also known as Chip?
11:11 20 A. Yes, sir.
21 Q. He is a lawyer?
22 A. Yes, sir.
23 Q. And he is your friend, correct?
24 A. Yes, sir.
11:11 25 Q. Robert G. Creely, again, a lawyer and a friend of yours?

17:11 1 A. Yes, sir.
2 Q. Don C. Gardner, a lawyer and a friend of yours?
3 A. Yes, sir.
4 Q. Leonard L. -- also known as Lenny -- Levenson, your friend
11:11 5 and an attorney, right?
6 A. Yes, sir.
7 Q. Joseph Mole, an attorney?
8 A. Yes, sir.
9 Q. Not one of your close friends?
11:12 10 A. We've never gone anywhere together. That would be a
11 correct statement.
12 Q. And Rhonda Danos has been your -- D-A-N-O-S -- has been
13 your secretary and assistant for more than 20 years now,
14 correct?
11:12 15 A. Since I was on the state bench. Twenty-three years.
16 Q. Twenty-three years.
17 Okay. Judge Porteous, before you filed your
18 voluntary petition for bankruptcy in March of 2001, let's go
19 back to the year -- calendar year 2000.
11:13 20 A. All right.
21 Q. You had engaged Mr. Lightfoot as your counsel in the latter
22 part of 2000, correct?
23 A. I knew it was in 2000. I don't remember the exact date;
24 but if that's what you say, I'm sure it is.
11:13 25 Q. Well, I will refresh your recollection.

11:13 1 But would you agree with me that at least by
2 November, December of 2000 he was your lawyer?
3 A. I believe that's correct, yeah.
4 Q. Now, after bankruptcy, you had a meeting with the trustee,
11:13 5 SJ Beaulieu, correct?
6 A. After what?
7 Q. After bankruptcy was filed.
8 A. After it was filed, that's correct.
9 Q. And you recall that Mr. Beaulieu handed you a pamphlet
11:13 10 called "Your Rights and Responsibilities in Chapter 13," which
11 we have marked as the Committee's Exhibit 11?
12 A. I believe that's -- yeah, right.
13 Q. And it bears the name of Mr. Beaulieu and has his local
14 New Orleans phone number?
11:14 15 A. Yes, sir.
16 Q. That is on Bates Page 399.
17 I'm sorry. I have my back to you.
18 A. All right.
19 Q. Calling your attention to this exhibit, there are
11:14 20 enumerated paragraphs. Paragraph 6, follow me while I read.
21 "Credit While in Chapter 13. You may not borrow money or buy
22 anything on credit while in Chapter 13 without permission from
23 the bankruptcy court. This includes the use of credit cards or
24 charge accounts of any kind."
11:14 25 Did I read that accurately, sir?

1T:14 1 A. You did.
2 Q. And do you recall reading that and discussing that with
3 Mr. Beaulieu?
4 A. I don't specifically recall it, but I'm not saying it
11:14 5 didn't happen.
6 Q. All right. Do you recall, on or about May 9th, 2001,
7 having a -- what's called a 341 bankruptcy hearing, where
8 Mr. Beaulieu as trustee was present; your attorney,
9 Mr. Lightfoot, was present; and you were present?
11:15 10 A. Yes, sir, I remember meeting with Mr. Beaulieu.
11 Q. And that meeting was recorded, if you -- do you recall
12 that?
13 A. I believe that's correct, yeah, tape recorded.
14 Q. Right.
11:15 15 Do you recall Mr. Beaulieu stating the following?
16 "Any charge cards that you may -- you have you cannot use any
17 longer. So, basically, you're on a cash basis now.
18 "I have no further questions except have you made
19 your first payments."
11:15 20 Did I read that accurately?
21 A. Yes, sir.
22 Q. So, you were told by Mr. Beaulieu that you couldn't incur
23 any more credit there, on credit cards, correct?
24 A. I'm not sure it was there, but I'm sure it was part of the
11:16 25 explanation at some point.

11:16 1 Q. Well, going back to --
2 A. When you ask -- I only meant in reference to the statement.
3 Yes, it's --
4 Q. Right.
11:16 5 A. -- contained in there, and I knew that.
6 Q. And it was your understanding -- and that's what I'm trying
7 to find out, sir -- that you couldn't incur more credit while
8 in bankruptcy, correct?
9 A. That's correct.
11:16 10 Q. Okay. Now, on June 2nd, are you familiar with the order
11 signed by Bankruptcy Judge Greendyke?
12 And this is from Exhibit 1, Bates Number SC50,
13 Exhibit 1 being the certified copy of the bankruptcy file.
14 "It is ordered that," going down to Number 4,
11:16 15 "the debtors shall not incur additional debt during the term of
16 this plan except upon written approval of the trustee."
17 Did I read that correctly?
18 A. You did.
19 Q. Was that your understanding at the time?
11:17 20 A. In the order, it was.
21 JUDGE LAKE: What's the date of that document?
22 MR. FINDER: July 2nd, 2001, was the docket date. It
23 was signed by Judge Greendyke June 28th, 2001.
24 JUDGE LAKE: Thank you.
11:17 25 BY MR. FINDER:

11:18 1 Q. Judge Porteous, we talked a little bit about the Ethics in
2 Government Act earlier, the Ethics in Government Act of 1978,
3 which has to do with your judicial filings. Under Title 5,
4 United States Code Appendix Section 101, et seq., "Judicial
11:18 5 officers" -- and tell me if you agree with this -- "Judicial
6 officers shall include a full and complete statement with
7 respect to the source, type, and amount or value of income from
8 any source, other than the current employment by the United
9 States, received during the preceding calendar year aggregating
11:18 10 \$200 or more in value."

11 Is that your understanding, sir?

12 A. Right.

13 Q. And the law goes on to state that it must be reported --
14 "the identity of the source, a brief description, and the value
11:18 15 of all gifts aggregating more than \$250, received from any
16 source other than a relative of the reporting individual during
17 the preceding calendar year."

18 A. Yes, sir.

19 JUDGE BENAVIDES: For what year is that?

11:19 20 MR. FINDER: This is just from the statute, your
21 Honor.

22 JUDGE BENAVIDES: All right. I think those gift
23 amounts vary from year to year.

24 MR. FINDER: Actually, they were lower; and these are
11:19 25 the current amounts.

1 BY MR. FINDER:
2 Q. So, what -- the amounts I just read to you apply to today.
3 When you first took the bench, presumably they were slightly
4 lower?
5 A. Presumably, yes.
6 Q. Okay. And these have to do with income and gifts?
7 A. Right.
8 Q. As I just read?
9 A. Yes, sir.
10 Q. Judge Porteous, you're familiar with the term "marker,"
11 aren't you?
12 A. Yes, sir.
13 Q. Would it be fair to state that, "A marker is a form of
14 credit extended by a gambling establishment, such as a casino,
15 that enables the customer to borrow money from the casino. The
16 marker acts as the customer's check or draft to be drawn upon
17 the customer's account at a financial institution. Should the
18 customer not repay his or her debt to the casino, the marker
19 authorizes the casino to present it to the financial
20 institution or bank for negotiation and draw upon the
21 customer's bank account any unpaid balance after a fixed period
22 of time." Is that accurate?
23 A. I believe that's correct and probably was contained in the
24 complaint or -- or the second complaint. There's a definition
25 contained.

11:20 1 Q. And you have no quarrel with the definition?
2 A. No, sir.
3 Q. Okay. Judge Porteous, if markers are a form of borrowing
4 or an extension of credit, by definition, would you agree that
11:21 5 from approximately August 20th to 21st, a two day period in
6 2001, you borrowed approximately \$8,000 from Treasure Chest
7 Casino in Kenner, Louisiana, by taking out approximately eight
8 1,000-dollar markers over a two day period?
9 A. Well, did I sign \$8,000 worth of markers? You have records
11:21 10 that suggest I did that. I agree with you.
11 Q. Okay.
12 A. The issue is that we haven't -- I have an issue with
13 whether that's credit. The statement itself says it acts like
14 a check against your account. Now, I did not have an
11:21 15 \$8,000-dollar line of credit at -- where was that? Treasure
16 Chest?
17 Q. Treasure Chest. I didn't ask you about a line of credit,
18 though.
19 A. I understand, but I'm explaining to you why that's
11:21 20 misrepresentative.
21 Q. Okay. Well --
22 A. Those are just repetitive 1,000 -- had I written a check
23 for a thousand, I do not believe I would have been in violation
24 of any court order.
11:22 25 JUDGE BENAVIDES: But you're saying that you didn't

11:22 1 not -- for instance, you could not sign a marker for \$8,000
2 because that was above your limit but that would not have
3 precluded you from making out eight different markers for
4 \$1,000 during a two day period?

11:22 5 THE WITNESS: Only if that line -- only if I had the
6 funds for the line of credit. In other words, I may have
7 signed a thousand dollar marker, played a little while, won,
8 paid it back. That's what it sounds like to me.

9 I have no specific recollection of that, Judge.
11:22 10 But that's what I'm saying, yes, sir.

11 JUDGE BENAVIDES: So, you're not disputing that there
12 may have been eight markers for \$1,000. What you're saying is
13 that at any one time you dispute that you owed \$8,000.

14 THE WITNESS: That's correct, your Honor. I couldn't
11:22 15 get it. I mean --

16 JUDGE BENAVIDES: I understand what you mean.

17 BY MR. FINDER:

18 Q. Judge Porteous, I'm going to show you what's from
19 Exhibit 54, Bates Number SC1436. These are records from the
11:23 20 Treasure Chest Casino in Kenner, Louisiana. And we'll have
21 more testimony about this later through Agent Horner.

22 But just by way of illustration, you see where it
23 has "MRK," "marker"?

24 A. Right.

11:23 25 Q. And it shows various 1,000-dollar markers?

11:23 1 A. Uh-huh.
2 Q. And remember, these were taken out August 20 and 21, the
3 dates --
4 A. Well, that's not those dates.
11:23 5 Q. That's the wrong page. Here we go.
6 JUDGE LAKE: What exhibit is that?
7 MR. FINDER: It's SC1438. I had the wrong page.
8 MR. WOODS: Exhibit 54.
9 MR. FINDER: Exhibit 54.
11:23 10 BY MR. FINDER:
11 Q. August 21st, '01, you were in Chapter 13 bankruptcy,
12 correct?
13 A. Yes, sir.
14 Q. Let's look at this entry. "MK" for "marker"?
11:23 15 A. Uh-huh.
16 Q. Taken out August 21 in the amount of a thousand dollars?
17 A. Uh-huh.
18 Q. Paid back September 9th, correct?
19 A. If that's what it says, yeah.
11:24 20 Q. That's what it says.
21 Next entry highlighted, marker, 8-21-01,
22 apparently paid back right way?
23 A. Right.
24 Q. Next marker, also -- also for a thousand dollars, not paid
11:24 25 back till September 9th?

11:24 1 A. All right.
2 Q. Next marker, August 21, a thousand dollars, not paid back
3 till September 15, correct?
4 A. It looks like that, yeah. Yeah.
11:24 5 Q. This is --
6 A. Yes. I got it.
7 Q. I don't think it's going to --
8 JUDGE LAKE: So, the net effect of this was that
9 \$3,000 of the 8,000 was paid back at a later date. Is that
11:24 10 what the document shows?
11 MR. FINDER: Yes, sir.
12 JUDGE LAKE: Approximately within a month of that?
13 MR. FINDER: That's correct. It wasn't just taking
14 out a marker and paying it back within hours or the same day.
11:25 15 JUDGE LAKE: So, 5,000 was paid back; 3,000 was
16 some -- some form of extension of credit?
17 MR. FINDER: That's correct, that's what this record
18 tends to show.
19 JUDGE BENAVIDES: So, let's say on March 21st at the
11:25 20 end of the day there would have been outstanding balance on the
21 markers --
22 MR. FINDER: That's correct.
23 JUDGE BENAVIDES: -- for a debt exceeding the \$1,000?
24 MR. FINDER: Yes, sir.
11:25 25 JUDGE BENAVIDES: And you could actually figure this

11:25 1 out on a daily basis?

2 MR. FINDER: Yes, sir. And we'll get into greater

3 detail on that later but this is an introduction to it and that

4 is correct.

11:25 5 BY MR. FINDER:

6 Q. We could do the same exercise for all of them for -- that

7 are listed in the charge. For example, on October 13th, 2001,

8 you borrowed approximately a thousand dollars Treasure Chest in

9 the form of two 500-dollar markers.

11:26 10 Yeah, here it is.

11 MR. FINDER: That's the best I can do. I hope you can

12 read it.

13 BY MR. FINDER:

14 Q. And those apparently were paid back the same day, correct?

11:26 15 A. Yes, sir.

16 CHIEF JUDGE JONES: What page number is that?

17 MR. FINDER: This is Page 1437.

18 CHIEF JUDGE JONES: Okay.

19 BY MR. FINDER:

11:27 20 Q. But, then, on October 17th and 18th -- and I'm talking

21 about the same exhibit, Pages 1436 and '37 -- there were -- can

22 you read this, Judge Porteous?

23 A. If you'll stop moving it, I might be able to.

24 Q. I don't mean to get you dizzy.

11:27 25 A. Yeah. Two 500. Well, five --

17:27 1 Q. Okay. On October 17th and 18th, you borrowed in excess of
2 \$5900 from Treasure Chest, taking out approximately ten markers
3 of various denominations over the two days, 4400 of which was
4 paid back on November 9th. Do you recall that?

11:27 5 A. I don't recall it. I'm sorry.

6 That's what year?

7 Q. If that's what the records show, though, you don't dispute
8 it?

9 A. If that's what the record says, the record says it.

11:28 10 Q. Okay. We'll go into that with Agent Horner.

11 JUDGE LAKE: Do you have a summary exhibit which shows
12 what the -- the dates the items were paid? In other words,
13 there's a portion of this 5900 apparently was repaid the same
14 day and the balance was paid the next month?

11:28 15 MR. FINDER: We believe our FBI witnesses will be able
16 to summarize that. This was just an introduction to it.

17 MR. WOODS: To answer your question, we do not have a
18 specific chart summarizing that but we do have charts
19 summarizing gambling debt.

11:28 20 JUDGE BENAVIDES: But the records themselves reflect
21 the date of payment?

22 MR. WOODS: Yes, sir.

23 JUDGE BENAVIDES: So, whether we have a summary person
24 or not, we could figure those things out?

11:28 25 MR. FINDER: They're all --

11:28 1 MR. WOODS: The agent will tell us.
2 JUDGE LAKE: You might ask the agent to be attuned to
3 do that.
4 MR. FINDER: I think he's been so instructed.
11:29 5 BY MR. FINDER:
6 Q. We've talked about the filing of your bankruptcy, your
7 Honor, and not incurring new debt. That was in the pamphlet,
8 that was in the court order, and that was in the recorded
9 hearing. Do you remember those?
11:29 10 A. Yes, sir.
11 Q. Okay. Judge Porteous, on March 28th --
12 A. What year?
13 Q. 2001.
14 A. Okay.
11:29 15 Q. Following the filing of your Chapter 13 bankruptcy
16 petition, you and Mrs. Porteous did, in fact, incur additional
17 credit card debt on your Fleet Credit Card. Do you recall
18 that?
19 A. I do not recall that. I believe the exhibit says it's my
11:29 20 wife's card, but I don't remember that.
21 Q. Your wife was your co-debtor on the bankruptcy petition,
22 was she not?
23 A. She was.
24 Q. And the bankruptcy -- we'll get into this later; but the
11:29 25 bankruptcy schedule required all credit cards, everything, to

11:30 1 be scheduled, to be listed, correct?
2 A. Right.
3 And what date was that? March 28th, you said?
4 I'm sorry.
11:30 5 Q. March 28th, 2001 --
6 A. Yes.
7 Q. -- following the bankruptcy, the original petition,
8 correct?
9 A. Yes.
11:30 10 Q. All right. Now, as of March 5th -- and I'm referring to
11 Exhibit 21 -- okay. Showing you what's Exhibit 21, a statement
12 from Fleet Credit Card, Judge.
13 A. Right.
14 Q. You'll notice that it's Account Number [REDACTED],
11:30 15 correct?
16 A. Yes, sir.
17 Q. And from Fleet Credit Card Service for the account of
18 Carmella Porteous, right?
19 A. Right.
11:30 20 Q. Now, if you look at these dates under the account
21 transactions, you'll see from March 5th through March 19th,
22 correct?
23 A. I can't see it, but I'm satisfied it says that. I just
24 can't see --
11:30 25 Q. Well --

11:31 1 A. I'm not disputing it says that, counsel.
2 Q. All right. This is -- March 5th is right before the
3 bankruptcy, right?
4 A. Yes, sir.
11:31 5 Q. March 19th we're in the bankruptcy -- we're into the
6 bankruptcy period, correct?
7 A. Well, before the bankruptcy was filed; but you're right.
8 Q. March 28th. If you'll look at March 8th, you'll see that
9 this credit card in the amount of \$157.99 was used at Harrah's
11:31 10 Casino in New Orleans.
11 Well, maybe you can't see it; but I'll be happy
12 to show you.
13 A. No. I'm satisfied you're not misrepresenting it.
14 MR. WOODS: Your Honor, you have documents in the
11:32 15 boxes, that he's using, if you want to refer to them.
16 THE WITNESS: Well, I don't want to -- I have to stay
17 up here. I don't want to necessarily -- I mean, I'm not --
18 MR. WOODS: I could move them there if you want me to.
19 THE WITNESS: I don't dispute he's reading this
11:32 20 correctly. I jut -- he asked me could I see it, and I just
21 can't see it.
22 BY MR. FINDER:
23 Q. Now, again, bankruptcy was March 28th, the amended petition
24 was April 9th, correct?
11:32 25 A. Right.

17:32 1 Q. I'm going to show you now, Judge Porteous, from Exhibit 1
2 the Chapter 13 schedules and plan.
3 A. All right.
4 Q. This will be a little bigger and easier to read, hopefully.
11:32 5 This is in your case, with your docket number,
6 submitted by Claude Lightfoot, your attorney, correct?
7 A. Yes, sir.
8 Q. And I wish you did have it in front of you, and I'll show
9 you mine.
11:33 10 A. I'll pull it out if it's --
11 Q. But I would like you to tell me where Fleet Credit Card is
12 listed in here on the schedule of your credit cards.
13 A. Well, if it's not listed, it's not listed.
14 Q. So, you'll take my word it's not listed?
11:33 15 A. Yeah.
16 Q. Okay.
17 A. I don't know whether it was in existence, whether it was
18 paid off or not. I don't know anything about that. I mean, as
19 I'm sitting here, I don't recall.
11:33 20 Q. Well, whether it was paid off or not -- let's look at the
21 schedule -- I believe it's at Schedule F -- which lists
22 numerous credit cards --
23 A. All right.
24 Q. -- such as American Express at Surety Bank, Bank of
11:34 25 Louisiana MasterCard, Chase Platinum MasterCard, Citibank

11:34 1 Advantage, Citibank Advantage. The list goes on.
2 A. Right.
3 Q. This is in alphabetical order. Fleet does not appear,
4 correct?
11:34 5 A. Does not appear.
6 Q. And is it your testimony that if it was paid off it
7 wouldn't have to be on this list? If you had a zero balance on
8 the date this was filed, it wouldn't have to be on the list?
9 A. Well, it was not a -- if there was no debt, they weren't a
11:34 10 credit, to my understanding. It says "creditors' names." The
11 ones you -- as I understood, the instruction was that you owed
12 money to.
13 Q. Well, when you use a credit card, it's an extension of
14 credit, correct?
11:34 15 A. Correct.
16 Q. So, you pay it?
17 A. Right.
18 Q. So, if it's not on this list because it has a zero balance
19 and then you use it to go to JC Penney or the casino and you
11:34 20 rack up credit on it, that's incurring credit, incurring debt?
21 A. That's incurring additional credit, correct.
22 Q. Okay.
23 JUDGE LAKE: Was credit extended on that account after
24 the date of the bankruptcy filing?
11:35 25 MR. FINDER: I think the evidence -- they were

11:35 1 showing, Judge, that the card was not listed but was used as a
2 credit card after the date of the bankruptcy and the amended
3 petition of bankruptcy.

4 JUDGE BENAVIDES: So, it wasn't included in the list
11:35 5 of creditors while the card had been used before and -- before
6 the petition was filed and prior to the payment that was made
7 for the charge upon the card?

8 MR. FINDER: That's correct.

9 JUDGE BENAVIDES: So, you're contending there was a
11:35 10 transaction existing --

11 MR. FINDER: That's my next exhibit.

12 JUDGE LAKE: It was used -- I guess to follow up, and
13 it was used after the bankruptcy filing? Is that what you
14 said?

11:35 15 MR. FINDER: Yes, sir. That's my next exhibit.

16 JUDGE LAKE: All right. Sorry.

17 BY MR. FINDER:

18 Q. From Exhibit 21, also --

19 A. All right.

11:35 20 Q. -- Bates Page 592, again, same account number, Fleet Credit
21 Card, your wife's name?

22 A. Right.

23 Q. Now, it shows here purchases and cash advances, \$734.31,
24 correct?

11:36 25 A. Yes, sir.

11:36 1 Q. Do you see that?
2 Okay. And this credit card was used throughout
3 the month of May and June, correct?
4 You can see the entries on the left-hand side,
11:36 5 highlighted in the yellow, one of whom -- one entry which is in
6 red for the Treasure Chest, which is a casino, is it not?
7 A. Yes, sir.
8 Q. And that's \$174.99, correct?
9 A. That's what it says.
11:36 10 Q. So, if it's on this statement, that means there was an
11 extension of credit, correct?
12 A. That appears to be correct.
13 Q. Okay. Moving on to the next month's statement, also from
14 Exhibit 21, Bates Page 593, would you agree, Judge Porteous,
11:36 15 this is the same account, same account number?
16 A. (Nodding head.)
17 Q. Is that a "yes"?
18 A. Yeah.
19 Q. Okay. And from June 15th to July 18th -- and this is the
11:37 20 best copy we have. So, I know it's a little hard to read.
21 This card was used, including for Harrah's in New Orleans, for
22 \$91.99 and Treasure Chest for \$68.99. I'll be happy to show
23 you this.
24 A. No. I'm satisfied that's what you're reading.
11:37 25 Q. All right. Judge Porteous, are you aware that -- strike

11:38 1 that.

2 Let's go back to the Chapter 13 schedules and
3 plans, which, again, is from Exhibit 1, starting with Bates
4 Number 91.

11:38 5 Judge Porteous, would you agree that you did
6 conceal assets and income from the bankruptcy estate and from
7 your attorney by filing false and misleading schedules with the
8 bankruptcy court and signing them under penalty of perjury?
9 A. I would not agree with that.

11:39 10 Q. All right.

11 JUDGE BENAVIDES: Counsel, I hesitate to interrupt
12 you. And perhaps you will get into this at a later time; but
13 before we leave Fleet, your record evidence suggests that a
14 number of charges on Mrs. Porteous' card prior to and during
11:39 15 the time that the bankruptcy petition or case was on file --

16 MR. FINDER: Yes.

17 JUDGE BENAVIDES: -- with the bankruptcy judge. Do
18 you intend at a later time or not to present evidence with
19 respect to payments made with -- during that period of time and
11:39 20 when the payments were made and how the -- and who made those
21 payments?

22 MR. FINDER: We do intend to show evidence that the
23 card was paid off in full through a check by Rhonda Danos. But
24 I'm just not there yet, but I will get there.

11:40 25 JUDGE BENAVIDES: All right. So, you'll get to that

11:40 1 and who -- who authorized payments and things like that?
2 MR. FINDER: Yes, sir.
3 JUDGE BENAVIDES: The judge had mentioned something
4 about it was his wife's account, and I wanted to --
11:40 5 MR. FINDER: That's correct.
6 JUDGE BENAVIDES: All right.
7 BY MR. FINDER:
8 Q. All right. Judge Porteous, again, from the Exhibit 1,
9 starting with Bates Number 91 --
11:40 10 A. All right.
11 Q. -- the Chapter 13 schedule and plan, we've already talked
12 about?
13 A. Yes, sir.
14 Q. Okay. Let's go through this for a moment.
11:40 15 Under Schedule B, "Personal Property."
16 A. All right.
17 Q. "Type of property, checking, savings, or other financial
18 accounts, certificates of deposit, shares in banks, savings and
19 loan, thrift, building and loan, homestead association, or
11:41 20 credit unions, brokerage houses, or cooperatives." Did I read
21 that accurately?
22 A. Yes, sir.
23 Q. And you listed Bank One Checking Account [REDACTED]. Is
24 that correct?
11:41 25 A. That's correct.

1 Q. And the current value of that interest is \$100, correct?
2 A. Yes, sir.
3 Q. And that's on Page 95?
4 A. Bates Page 95.
11:41 5 Q. Bates Page 95. Bates Page 96, Schedule B, Question 17,
6 "Other liquidated debts -- other liquidated debts owing debtor,
7 including tax refunds, give particulars." And in the next box,
8 it's checked off "none," correct?
9 A. Yes, sir.
11:42 10 Q. Attached to this exhibit, starting on Bates Page 112, the
11 statement of financial affairs, are you familiar with that,
12 sir?
13 A. Yes, sir.
14 Q. And on the last page of that statement of financial
11:42 15 affairs, with Bates Number SC116?
16 A. Right.
17 Q. "I declare under penalty of perjury that I have read the
18 answers contained in the foregoing statement of financial
19 affairs and any attachments thereto and they are true and
11:42 20 correct," dated April 9th, '01, the date of the amended
21 petition, signed by you and your wife, correct?
22 A. Yes, sir.
23 Q. So, you would agree with me, Judge Porteous, this is a
24 document that had a jurat that required that it be signed --
11:43 25 well, that it be signed under penalty of perjury, correct?

43 1 A. Yes, sir. You just read that.

2 Q. Right. There was another one. This -- that had to do with

3 statement of financial affairs.

4 On Page 111, "Declaration concerning debtors'

11:43 5 schedules," just about the schedules. Now, "Declaration under

6 penalty of perjury by individual debtor," it states, "I declare

7 under penalty of perjury that I have read the foregoing summary

8 and schedules consisting of 16 sheets plus the line summary

9 page and that they are true and correct to the best of my

11:43 10 knowledge, information, and belief," dated April 9th, '01,

11 signed by you and your wife, correct?

12 A. Right.

13 Q. Isn't it true, Judge Porteous, that although you replied

14 "none" to "tax returns," that you and your wife filed for a

11:44 15 federal tax refund on March 23rd, 2001, in the amount of

16 \$4,143.72, which was just five days before your original

17 Chapter 13 petition was filed? Do you recall that?

18 A. I know we filed for a tax refund.

19 Q. All right. Let me show it to you.

11:44 20 Exhibit 24, do you recognize this as being your

21 1040 return?

22 A. Yes, sir.

23 Q. For tax year -- for 2000 --

24 A. 2000.

11:44 25 Q. -- correct?

11:44 1 And this is Bates Page 600?

2 A. Right.

3 Q. This is going to be tough to read, but feel free to look at

4 your copy.

11:45 5 Under the section "Refund," which is sort of cut

6 off on my copy, Line 67a, "Amount of Line 66 you want refunded

7 to you, \$4,143.72" --

8 A. Yes, sir.

9 Q. -- correct?

11:45 10 It's signed, again under penalty of perjury, by

11 you and your wife on March 23rd, 2001, correct?

12 A. Yes, sir.

13 Q. And has your occupation as judge and your wife -- your

14 wife's occupation as housewife?

11:45 15 A. Right.

16 Q. And this is on Page 601, correct, Bates page?

17 A. Yes, sir.

18 Q. March 23rd, 2001, less than a week before you filed

19 Chapter 13, correct?

11:45 20 A. Yes, sir.

21 Q. And on your schedule, you put that you had no refund?

22 A. When that was listed, you're right.

23 Q. Okay. From your Exhibit 25, from your Bank One bank

24 account, Judge G. Thomas Porteous, Jr., Account [REDACTED]

11:46 25 actually, that number is a little bit different than the one

11:46 1 that was on the schedule. Maybe there was a typo.
2 If you look on Schedule B that we've read before,
3 this account starts with [REDACTED] but the actual statement
4 has a different few numbers that start. Probably just a typo,
11:46 5 don't you think?
6 A. I know there's bottom numbers on those checks. I always
7 called that account, I think, 00.
8 Q. All right. Now, going back to this Exhibit 25 --
9 A. Uh-huh.
11:47 10 Q. And I regret that I can't get this clearer; but it shows on
11 April 13th, a deposit of an IRS tax refund of \$4,143.72,
12 correct?
13 A. Yes, sir.
14 Q. And that deposit was April 13th?
11:47 15 A. Yes, sir.
16 Q. Just four days after your amended return was filed,
17 correct?
18 A. Yes, sir.
19 Q. Your amended return was April 9th?
11:47 20 A. Yes, April 9th.
21 Q. But nothing was mentioned on that return?
22 A. No. I know I called my -- I called Claude when I got it.
23 And by Claude, I meant Mr. Lightfoot. I'm sorry.
24 Q. You discussed that with Mr. Lightfoot?
11:47 25 A. I did.

1T:48 1 Q. Did he tell you not to put it on the return?
2 A. No, no. I discussed that I received the refund, what
3 should I do with it.
4 Q. What did Mr. Lightfoot tell you?
11:48 5 A. Said, "If the trustee didn't put a lien on it, put it in
6 your account; but they may -- they may ask for it back."
7 Q. But, Judge Porteous, that schedule was signed under penalty
8 of perjury.
9 A. It was omitted. I don't know how it got omitted. There
11:48 10 was no intentional act to try and defraud somebody. It just
11 got omitted. I don't know why.
12 We had been fighting this, trying not to go into
13 bankruptcy for a long time. And I don't know. It just didn't
14 appear on the schedule.
11:48 15 Q. Okay.
16 JUDGE BENAVIDES: How many days before the schedule
17 was made that omitted that was the request for refund made of
18 the filing?
19 MR. FINDER: About five days, five days from the
11:49 20 original petition, your Honor. The schedule was on the amended
21 petition and --
22 JUDGE BENAVIDES: Well, I'm trying to get the
23 difference in date between the date he signs the statement
24 saying he has no refund coming --
11:49 25 MR. FINDER: Right.

11:49 1 JUDGE BENAVIDES: -- and the date that he asked for a
2 refund from -- on his tax return.

3 MR. FINDER: Right. The original petition was
4 filed -- it was about five days before the original petition.

11:49 5 JUDGE BENAVIDES: All right.

6 MR. FINDER: Right. And the schedule was April 9th,
7 but -- and it was listed -- it was not listed on it. It was
8 listed as "none."

9 BY MR. FINDER:

11:49 10 Q. Okay. Judge Porteous, let's go back to Schedule B,
11 Question 2 --

12 A. All right.

13 Q. -- where it says, "checking, savings or other financial
14 accounts."

11:50 15 A. Right.

16 Q. And you listed a hundred dollars?

17 A. Right.

18 Q. Can you see -- okay. And again, this was in April, right?

19 A. Yeah.

11:50 20 Q. Okay. April 9th?

21 A. Yes, sir.

22 Q. And we have -- do you recall, Judge Porteous, owning a
23 Fidelity money market account, Account Number [REDACTED]

24 A. Right.

11:50 25 Q. Okay. Let me show you, Judge Porteous, Exhibit 28.

11:51 1 A. All right.
2 Q. Which is your Fidelity money market account, correct?
3 A. Yes, sir.
4 Q. And this is for you and your wife, correct?
11:51 5 A. Right.
6 Q. The account number I just read, correct?
7 A. Right.
8 Q. Statement period March 21, 2000, through April 20th,
9 2000 -- I'm sorry, 2001 through April 20th, 2001, correct?
11:51 10 A. Right.
11 Q. And you see on March 28th, Check Number 581 for \$283.42,
12 your balance, right? That was your balance in that account?
13 A. That's what it says, that's correct.
14 Q. Okay. Yet, on your bankruptcy schedule, you put that the
11:51 15 account -- this was the day before bankruptcy; and on your
16 bankruptcy schedule you put you only had a hundred dollars in
17 the account, correct?
18 A. It appears this is the Fidelity account.
19 Q. Right.
11:51 20 A. And since it's not listed, for some reason it didn't
21 appear, apparently, on my bankruptcy, because only Bank One
22 appeared, it looks like.
23 Q. Okay.
24 A. Although, I thought I told Claude about all the -- I only
11:52 25 had two.

11:52 1 Q. Well, your attorney told you to get all your records --
2 A. Right.
3 Q. -- and make --
4 A. I could have sworn --
11:52 5 Q. Correct.
6 A. I honestly believed we told Claude about Fidelity. There
7 was really no reason not to tell him about Fidelity. The
8 account at any given time which would have had the most money
9 would have been the Bank One account because my checks were
11:52 10 deposited in there.
11 JUDGE LAKE: Mr. Finder, I'm not clear. Are we
12 talking about the difference in the Bank One disclosure and --
13 MR. FINDER: No. It wasn't listed, Judge, and was an
14 account -- there was more money than was listed on the
11:52 15 schedule.
16 JUDGE LAKE: You're saying the account was not
17 disclosed at all?
18 MR. FINDER: I don't believe it was.
19 CHIEF JUDGE JONES: Fidelity or Bank One?
11:52 20 MR. FINDER: Bank One was -- Bank One was disclosed.
21 CHIEF JUDGE JONES: For too small an amount?
22 MR. FINDER: Right.
23 CHIEF JUDGE JONES: Fidelity was not disclosed?
24 MR. FINDER: Correct.
11:53 25 JUDGE LAKE: And where in the charge is Fidelity

1T:53 1 referred to? That's the question.
2 MR. FINDER: I believe it was in -- on Page 12. It's
3 not -- the name of the institution isn't in there, but
4 that's --
11:53 5 JUDGE BENAVIDES: How much was in Fidelity at the time
6 of the filing?
7 MR. FINDER: The balance on the day before bankruptcy
8 was \$283.42.
9 JUDGE LAKE: So, that's the last bullet point on Page
11:53 10 12, is the Fidelity account?
11 MR. FINDER: Yes, sir.
12 JUDGE BENAVIDES: And, then, the one that was
13 listed --
14 MR. FINDER: The Bank One for a hundred, I believe
11:53 15 we'll have more evidence later on that.
16 JUDGE BENAVIDES: Okay. That's not here yet.
17 THE COURT REPORTER: I'm sorry, Judge?
18 JUDGE BENAVIDES: That's not presently before us. I
19 think Mr. Finder is saying he's getting to that later.
11:53 20 MR. FINDER: Actually, in the charge, we had a balance
21 of 280 and the actual amount was \$283.42; so, there was a \$3.42
22 variance.
23 BY MR. FINDER:
24 Q. Now, Judge Porteous, we already discussed, from Exhibit 1,
11:54 25 Bates Page 112, the statement of financial affairs and the

17:54 1 jurat that had to be -- it was being signed under penalty of
2 perjury. Do you remember that?
3 A. Right.
4 Q. Okay. And on this page it says, "Payments to creditors.
11:54 5 List all payments on loans, installment purchases of goods or
6 services, and other debts aggregating more than \$600 to any
7 creditor made within 90 days immediately preceding the
8 commencement of this case."
9 And then in parenthesis, "Married debtors filing
11:55 10 under Chapter 12 or Chapter 13 must include payments by
11 either/or both spouses whether or not a joint petition is
12 filed, unless the spouses are separated and a joint petition is
13 not filed."
14 Did I read that accurately?
11:55 15 A. You did.
16 Q. And where it requests the name and address of the
17 creditors, it just says "Normal Installments," correct?
18 A. Yes, sir.
19 Q. Let's go back to our Fleet Credit Card, Exhibit 29.
11:55 20 And, again, here is a -- sorry. I had the wrong
21 page. Give me a moment. Here it is.
22 This is the account number we discussed before,
23 correct, from the Fleet Credit Card for Mrs. Porteous?
24 A. Yes, sir.
11:56 25 Q. The balance of \$1,088.41, correct?

11:56 1 A. That's what it says, yes, sir.

2 Q. That's what it says.

3 And the date of this statement -- under the
4 account number, it has payment due date April 15th, 2001, with
11:56 5 a new balance of 1088.41, correct?

6 A. Yes, sir.

7 Q. Now, the next statement, for the end of March and April,
8 shows past due amount zero because of the previous balance a
9 thousand -- there was a previous balance of 1,088.41. Do you
11:57 10 see that?

11 A. All right. Yes, sir.

12 Q. And then there was a payment recorded by the credit card
13 company on March 29th, 2001?

14 A. All right.

11:57 15 Q. Of 1,088.41?

16 A. Right.

17 MR. FINDER: Your Honor, this is what you were getting
18 at a little earlier.

19 BY MR. FINDER:

11:57 20 Q. Plus charges -- new charges for GameCash. Is that a
21 casino?

22 A. Is what? I'm sorry.

23 Q. GameCash?

24 A. I'm sure it is.

11:57 25 Q. Biloxi, Mississippi?

11:57 1 A. Sounds like it.
2 Q. And Beau Rivage Hotel in Biloxi, that's a casino, isn't it?
3 A. It is.
4 Q. For \$215.99 and \$231, respectively, correct?
11:57 5 A. Yes, sir, that's what it reflects.
6 Q. So, that was not listed on your schedule, was it, that
7 payment?
8 A. No, sir.
9 JUDGE LAKE: Which payment?
11:58 10 MR. FINDER: The Fleet.
11 JUDGE LAKE: Where --
12 MR. FINDER: I'm sorry?
13 JUDGE LAKE: Where are you referring when you say,
14 "That payment was not listed on your schedule"?
11:58 15 MR. FINDER: On page --
16 JUDGE LAKE: Are you referring to the 1,088 payment?
17 MR. FINDER: That's correct.
18 JUDGE LAKE: What about the subsequent payments?
19 MR. FINDER: Well, the 1,088, which was paid right
11:58 20 before the bankruptcy was filed -- at the time of the
21 bankruptcy filing, was not listed even though the schedule
22 called for all such payments prior to the filing of bankruptcy.
23 And this is the payment that --
24 CHIEF JUDGE JONES: Well, then new charges were
11:58 25 incurred at the casino?

IT:58 1 MR. FINDER: Among other places.
2 CHIEF JUDGE JONES: After -- yes, after.
3 Mr. Finder, we're going to take a break around
4 noon; so, you have about five minutes.
11:58 5 MR. FINDER: Okay. Thank you.
6 BY MR. FINDER:
7 Q. Judge Porteous, do you recall obtaining two 1,000-dollar
8 markers -- we may have -- we touched on this earlier --
9 2,000 -- two 1,000-dollar markers from Grand Casino Gulfport on
11:59 10 or about February 27th, 2001, which were deposited against your
11 bank account on April 4th, one week after the filing of your
12 Chapter 13 petition?
13 Do you have an independent recollection of that?
14 A. No, I do not have an independent recollection.
11:59 15 Q. Or five days before the amended voluntary petition?
16 A. I do not have an independent recollection of that.
17 Q. All right.
18 MR. FINDER: Judges, this may be a good place to stop
19 before I go on to the next area, as long as we're going to
11:59 20 break for lunch.
21 CHIEF JUDGE JONES: Okay. We'll take about an hour.
22 THE WITNESS: 1:00 o'clock, your Honor?
23 CHIEF JUDGE JONES: Yes, sir.
24 THE WITNESS: Judge, just for my own information, what
12:00 25 time will we be going till today? I'm not --

12:00 1 CHIEF JUDGE JONES: We think until around 5:00.
2 THE WITNESS: Okay. I just was asking. That's all.
3 CHIEF JUDGE JONES: Yes.
4 THE WITNESS: Thank you.
12:00 5 CHIEF JUDGE JONES: All right. Thank you.
6 We'll be in recess.
7 (Recess taken from 12:00 p.m. to 1:05 p.m.)
8 CHIEF JUDGE JONES: Be seated, please. We're ready to
9 resume.
01:04 10 MR. FINDER: Your Honors, I would like to clarify a
11 couple questions you had asked me at the bench.
12 BY MR. FINDER:
13 Q. Judge Porteous, let me call your attention again to
14 Schedule B.
01:05 15 JUDGE LAKE: I can't hear you.
16 MR. FINDER: Oh, I'm sorry.
17 JUDGE LAKE: Just pretend there is a whole platoon out
18 here awaiting your instructions.
19 JUDGE BENAVIDES: You may proceed. She has indicated
01:05 20 she'll be right back.
21 MR. FINDER: Oh, okay. Okay. Your Honors had asked
22 me a question regarding one of the matters about the Bank One
23 bank account, the hundred dollars. I don't recall which one of
24 you asked me, but it was in regard to Number 22 in the charge
01:05 25 on Page 12; and I wanted to clarify that.

01:05 1 BY MR. FINDER:
2 Q. Judge Porteous, let me call your attention again, please,
3 to Schedule B --
4 A. Okay.

01:05 5 Q. -- Number 2, the check where you were asked to list your
6 checking accounts.
7 JUDGE BENAVIDES: I'm sorry, counsel. I can't hear
8 you.
9 MR. FINDER: I'm sorry, Judge.

11:59 10 BY MR. FINDER:
11 Q. Call your attention to Schedule B, where you're asked --
12 Number 2, where you're asked to list your checking accounts and
13 I believe you put Bank One and a checking account number for
14 \$100. I believe we established that the account number had a
01:06 15 typographical error and was close but not exact.
16 Do you recall that?
17 A. All I think that meant was that the -- at the bottom of the
18 check, the banks use additional numbers. I think it was 690
19 would have been left out is all.

01:06 20 Q. That's fine. You're correct.
21 I'm going to show you now from Exhibit 27, which
22 we've already referenced but I -- there's a line on here I had
23 not referenced. This is from your Bank One statement. You can
24 see your name on there with the actual account number; and the
01:06 25 date of the statement is March 23rd to April 23rd, 2001.

01:06 1 It says, "Summary of Account Balance." The
2 balance as of April 23rd, which is the last day of the
3 statement period, was \$5,493.91. April 23rd being five days
4 before the amended petition was filed, correct?

01:07 5 A. Correct.
6 Q. Moving up a little bit, I believe it says --
7 A. Wait. I'm sorry. You said April 23rd being five days
8 before the amended petition was filed?
9 Q. I'm sorry. I'm wrong. It was after the amended petition
01:07 10 was filed. Forgive me.
11 Beginning balance, five fifty-nine oh seven;
12 ending balance \$493.91, correct?
13 A. Yes, sir.

01:07 14 MR. FINDER: Your Honors asked me to -- a question
15 about Number 23 in the charge, appearing on Pages 13 and 14,
16 having to do with who paid the Fleet Credit Card.
17 BY MR. FINDER:
18 Q. Judge Porteous, I'm going to show you Exhibit 29. And,
19 again, to refresh your recollection, this is the account number
01:08 20 to your Fleet Credit Card with a balance of \$1,088.41 on a
21 statement that is for the month of March.
22 You can see the account transactions, March 5th
23 through March 19th, correct?
24 A. Yes, sir.

01:08 25 Q. And the end -- and the new balance as of the -- this

01:08 1 statement is \$1,088.41. Did I --
2 A. Yes.
3 Q. -- state that correctly?
4 Okay. That's Page 618.
01:08 5 A. All right.
6 Q. Page 620, another Fleet Credit Card statement for the same
7 account shows the payment of \$1088.41, which Fleet recorded on
8 March 29th, correct?
9 A. Yes, sir.
01:09 10 Q. And that's one day after you filed the voluntary petition,
11 the first -- the original petition, correct?
12 A. The date they recorded it, yes.
13 Q. All right. Now showing you from Bates Number 619 --
14 MR. FINDER: What's the exhibit number for this?
01:09 15 MR. WOODS: Twenty-nine, I believe.
16 MR. FINDER: Exhibit --
17 MR. WOODS: Twenty-nine.
18 MR. FINDER: -- 29. Right, 29.
19 BY MR. FINDER:
01:09 20 Q. Check Number 1660 on the account of Rhonda F. Danos, dated
21 3-23-01, right -- five days before bankruptcy?
22 A. All right.
23 Q. Payable to Fleet in the same amount, \$1088.41, correct?
24 A. Yes, sir.
01:10 25 Q. And here in the highlighted portion for the memo, where it

01:10 1 says "For," "Carmella Porteous." And it has the Fleet bank
2 account number, correct?
3 A. Yes.
4 Q. So, it appears that Ms. Danos paid off Fleet, correct?
01:10 5 A. Well, her check did, yes.
6 Q. Her check did.
7 Which would have preferred Fleet 'as -- which was
8 paid off right before bankruptcy, as opposed to the other --
9 other creditors, correct?
01:10 10 A. I presuppose [sic] so. I'm not --
11 Q. Now, why was it, sir, that Rhonda Danos happened to pay off
12 your wife's credit card days before you filed bankruptcy?
13 A. I have no idea. I'm sorry.
14 MR. FINDER: Did your Honors have any more questions
01:10 15 about --
16 A. What date was that? I'm sorry, counselor.
17 BY MR. FINDER:
18 Q. The date of --
19 A. I have no idea.
01:11 20 Q. Judge Porteous, was Rhonda Danos in the habit of paying off
21 your wife's bills?
22 A. No, not that I'm aware of. I mean, she's paid some bills
23 for me, though.
24 Q. But you're not aware of her paying your wife's bills?
01:11 25 A. No. She didn't pay my wife's bill. A check paid it.

01:11 1 Q. Well, the check is made payable to your wife's creditor,
2 Fleet.
3 A. Right, a check paid it.
4 JUDGE BENAVIDES: Can I see that check again?
01:11 5 MR. FINDER: Yes, your Honor.
6 JUDGE BENAVIDES: All right.
7 MR. FINDER: Can you see?
8 BY MR. FINDER:
9 Q. Judge Porteous, did you ask Rhonda Danos to write that
01:11 10 check for payment of the Fleet account?
11 A. I have no recollection of asking her to do that.
12 Q. All right. Judge Porteous, on April 9th, 2001, when you
13 signed the statement of financial affairs in your bankruptcy
14 under penalty of perjury, which was on Exhibit 1, Bates
01:12 15 Number 116, Item 8 talks about losses.
16 Do you -- do you recall that independently, sir,
17 or do you have it in front of you?
18 A. I do not have that in front of me.
19 Q. All right. Can you read that?
01:12 20 A. Yes, sir.
21 Q. Okay. It asks you to list all losses for fire, theft,
22 other casualty, gambling within one year immediately preceding
23 the commencement of this case -- meaning your case -- or since
24 the commencement of this case. And I believe we read this
01:13 25 before, about married debtors filing under Chapter 12 and

01:13 1 Chapter 13.
2 And you list "none," correct?
3 A. That's what's listed, correct.
4 Q. Judge Porteous, do you recall that in the -- that your
01:13 5 gambling losses exceeded \$12,700 during the preceding year?
6 A. I was not aware of it at the time, but now I see your
7 documentation and that -- and that's what it reflects.
8 Q. So, you -- you don't dispute that?
9 A. I don't dispute that.
01:13 10 Q. Therefore, the answer "no" was incorrect, correct?
11 A. Apparently, yes.
12 Q. Even though this was signed under oath, under penalty of
13 perjury, correct?
14 A. Right.
01:13 15 The casino, you don't get a gratuitous statement
16 every year from them. I mean, you would have to get it from
17 them.
18 Q. You would have to ask for it?
19 A. Yes.
01:13 20 JUDGE LAKE: I couldn't hear. What you did you say?
21 THE WITNESS: You have to ask -- they don't send a
22 statement or anything, Judge. If you want to know your status,
23 you can go ask them; but they don't routinely send -- in fact,
24 they never send it out.
01:14 25 JUDGE LAKE: Okay. But they -- if you call them, they

01:14 1 will tell you?

2 THE WITNESS: What's that? I'm sorry.

3 JUDGE LAKE: If you call them, then they will tell

4 you?

01:14 5 THE WITNESS: Yes, sir. I assume they would.

6 JUDGE LAKE: Okay. Thank you.

7 JUDGE BENAVIDES: How much was owing?

8 MR. FINDER: Sir? I'm sorry.

9 JUDGE PORTEOUS: Gambling losses.

01:14 10 JUDGE BENAVIDES: How much was the amount owing?

11 JUDGE LAKE: He said 12,700 the previous year.

12 MR. FINDER: Twelve thousand seven hundred.

13 And we'll -- through our summary witness, we'll

14 get into more detail about gross versus net; but for the

01:14 15 present purpose, that's -- that's the information.

16 BY MR. FINDER:

17 Q. Judge Porteous, we've talked about your bankruptcy lawyer,

18 Claude Lightfoot, right?

19 A. Yes, sir.

01:15 20 Q. And we also mentioned earlier in our examination the fact

21 that Regions Bank, where you had done some business, was listed

22 as an unsecured creditor in the original voluntary petition,

23 correct?

24 A. Right.

01:15 25 Q. Is it a fact, sir, that Circuit Judge W. Eugene Davis made

01:15 1 a finding of crime fraud as to attorney-client privilege as to
2 discussions between you -- discussions and documents between
3 you and Mr. Lightfoot regarding the Regions Bank?
4 A. That's my understanding, correct.

01:15 5 Q. Let me show you what's been marked as Exhibit 12, an order,
6 which at the time it was under seal, the order of crime fraud.
7 Have you seen this order before?
8 A. I believe so.

01:16 9 Q. Okay. And the actual order for crime fraud was signed by
10 Judge Davis on October 19th, 2004. Is that correct?
11 A. That -- if that's what it says, of course.
12 Q. October 19th, 2004?
13 A. That's what it says.

01:16 14 Q. Okay. Therefore -- I wanted to establish that before I ask
15 you questions --
16 A. I understand.
17 Q. -- about this transaction.

18 You and Mr. Lightfoot agreed, at least by
19 December 21st, 2000 --

01:16 20 MR. FINDER: I'm sorry. Can you hear me?
21 BY MR. FINDER:
22 Q. -- by December 21st, 2000, to send out workout letters to
23 your various unsecured creditors, correct?
24 A. We talked about that, that's correct.

01:16 25 Q. And the decision was made between you and Mr. Lightfoot to

01:17 1 exclude Regions Bank, which was an unsecured creditor in the
2 amount of \$5,000 plus finance charges, from the list of
3 unsecured creditors that received the workout letter, correct?
4 A. That's correct.

01:17 5 Q. Showing you, sir, what's been marked as Exhibit 5, on the
6 stationery of Claude Lightfoot to you and Mrs. Porteous, dated
7 December 21st, 2000, "Regarding workout proposal."

8 "Dear Judge and Mrs. Porteous, I enclose a copy
9 of the letters and one copy of the attachments. I included
01:17 10 with each that have sent -- that I have sent to all the
11 unsecured creditors with the exception of Regions Bank, which
12 we wanted to exclude."

13 Did I read that accurately?

14 A. You did.

01:17 15 Q. Signed by Mr. Lightfoot, correct?

16 A. Right.

17 Q. On -- on a copy. This is Bates Number 296.

18 297, Bates Number 297, is a sample letter that
19 went to Bank of Louisiana MasterCard. Are you familiar with
01:18 20 that?

21 A. I've seen -- I don't know if I'm familiar with that
22 exactly, but I think they all said the same thing.

23 Q. Now, we've talked about the Fleet Credit Card, also; and
24 here are the lists of credit -- unsecured creditors that were
01:18 25 listed in Mr. Lightfoot's letter.

01:18 1 Fleet is not on here, is it?

2 A. It is not.

3 Q. Okay. But of those that are listed, the 13, Mr. Lightfoot

4 totals them up to a sum of \$182,330.23 in credit card debt,

01:18 5 correct?

6 A. Right.

7 Q. Mr. Lightfoot goes on in his letter to tell these unsecured

8 creditors they should accept the workout proposal and there

9 would be a -- the universe of cash available to pay them out is

01:19 10 \$39,398.90, which represents about 21 percent of the balances,

11 correct?

12 A. That's what it says, correct.

13 Q. Right.

14 Also, it says Regions Bank was being excluded.

01:19 15 And, in fact, Regions Bank is not listed anywhere in the

16 letter, is it?

17 A. That's right.

18 Q. The loan with Regions Bank -- and I'll show you Exhibit 4.

19 A. All right.

01:19 20 Q. The loan with Regions Bank, the original loan --

21 A. Yes, sir.

22 Q. -- was for \$5,000 plus a finance charge of \$30; and it was

23 taken out on January 27, 2000, correct?

24 Boy, it's hard to read.

01:20 25 A. You're right.

01:20 1 Oh, yeah, that's better.
2 Yes, sir, it says --
3 MR. FINDER: Can you all see?
4 BY MR. FINDER:
01:20 5 Q. And this Account [REDACTED] represents the account for
6 that loan, right?
7 A. Yes, sir.
8 Q. And you are the borrower?
9 A. That's correct.
01:20 10 Q. You are the borrower, and the lender is Regions Bank. Have
11 I read that correctly?
12 A. Yes, sir.
13 Q. All right. And this is on Bates Number 272.
14 A. All right.
01:20 15 Q. In fact, sir, you signed the note, correct?
16 A. Yes, sir.
17 Q. That's your signature, right?
18 A. Yes, sir.
19 Q. And that's on Page 273.
01:20 20 On the workup papers for this loan, it says
21 the -- again, same account number, same principal, loan date,
22 etcetera, which matures July 24th, 2000.
23 A. All right.
24 Q. Primary purpose of the loan is a personal loan, correct?
01:21 25 A. Uh-huh.

01:21 1 Q. Stated purpose, "Tuition for son," correct?
2 A. Uh-huh.
3 Q. Now, who was the son for whom you were asking for tuition?
4 A. Timmy or Tommy, I would think.
01:21 5 THE REPORTER: I'm sorry?
6 JUDGE PORTEOUS: Timothy or Tommy.
7 BY MR. FINDER:
8 Q. But you're not sure sitting here today?
9 A. Sitting here today, I don't know.
01:21 10 Q. Okay. There was a statement in the middle of the workout
11 paper -- I'm sorry -- the loan application paper, "Financial
12 Condition."
13 I'll read it. "By signing this authorization, I
14 represent and warrant to lender that the information provided
01:21 15 above is true and correct and that there has been no federal
16 material adverse change in my financial condition as disclosed
17 in my most recent financial statement to lender."
18 This authorization is dated June -- January 27,
19 2000, signed by you, correct?
01:22 20 A. Yes, sir.
21 Q. And that's on Page 274 --
22 A. Yes, sir.
23 Q. -- right?
24 CHIEF JUDGE JONES: Is that 2000 or 2001?
01:22 25 MR. FINDER: 2000.

01:22 1 THE WITNESS: 2000.
2 MR. FINDER: I'm building up to it.
3 CHIEF JUDGE JONES: I see.
4 BY MR. FINDER:
01:22 5 Q. On this other loan -- page to the loan application, dated
6 January 24th, it says -- and this is a little hard to read, but
7 follow with me -- "In the last ten years, have you been
8 bankrupt or are you in the process of filing bankruptcy?" And
9 it's checked off, "No."
01:22 10 A. Right.
11 Q. And that's accurate, correct?
12 A. I believe so.
13 Q. That was Page 276.
14 A. Yes, sir.
01:22 15 Q. Now, this loan got extended a couple of times, right?
16 A. I don't recall, but was that a 60 -- a six --
17 Q. Six months.
18 A. Six months. Had to have gotten renewed at least once.
19 Q. Okay. Well, let's talk about the renewal.
01:23 20 Here's the loan date, 7-24. It's the same amount
21 plus another \$30 for the loan fee?
22 A. Right.
23 Q. So, it's the same loan because -- I believe it's the same
24 account number.
01:23 25 A. It is.

UT:23 1 Q. All right. To you from Regions Bank. Everything else is
2 pretty much the same on this page, correct?
3 A. Right.
4 Q. And that page being 279?
01:23 5 A. Yes, sir.
6 MR. FINDER: I'm sorry, Judges. It's 279.
7 BY MR. FINDER:
8 Q. This loan is also signed by you, correct?
9 A. Yes, sir.
01:23 10 Q. And on the loan request it says, "Renewal of existing,"
11 right?
12 A. Yes, sir.
13 Q. And the loan officer -- or the branch -- who happens to be
14 the branch manager, I believe, Loretta Young, correct?
01:23 15 A. Yes, sir.
16 Q. As part of this loan package, you filled out the
17 information page, for, again, personal loan?
18 A. Right.
19 Q. "Specific Purpose," now it says, "Refinance existing." So
01:24 20 that's still for your son's tuition, correct?
21 A. Yes, sir.
22 Q. And the financial condition, you have still signed it?
23 A. Yes, sir.
24 Q. And this is July 24th, 2000?
01:24 25 A. Right.

01:24 1 Q. Let's jump ahead.
2 That was the first extension?
3 A. Yes, sir.
4 Q. Showing you now Bates 288, the second extension.
01:24 5 A. Yes.
6 Q. This loan is dated January 17th, 2001, correct?
7 A. Yes, sir.
8 Q. Matures July 17th, 2001?
9 A. Yes, sir.
01:25 10 Q. Now, January 17th, 2001, was a couple months before
11 bankruptcy, correct?
12 A. Ultimately, yes.
13 Q. Yes.
14 And, again, the rest of the terms are very
01:25 15 similar to the original and first extension, right?
16 A. Yes, sir, it appears to be.
17 Q. Okay. However, on January 17th, you had already engaged
18 Mr. Lightfoot to be your bankruptcy attorney, correct, because
19 we just saw the letters that went out for December?
01:25 20 A. I retained him to try and work out my debt and, if it
21 couldn't be worked out, to maybe consider bankruptcy.
22 Q. Right.
23 A. Correct.
24 Q. And on this loan, the second extension, you signed it?
01:25 25 A. Yes.

01:25 1 Q. And on the workup sheet to process the loan, again, by
2 Loretta Young?
3 A. Right.
4 Q. Your name?
01:26 5 A. Right.
6 Q. Same account number but here it says, "In the last -- In
7 the last ten years, have you been bankrupt or are you in the
8 process of filing bankruptcy?" And now it's checked "No"?
9 A. Right.
01:26 10 Q. In fact, by this time you had already -- as you just
11 stated, you had already talked to Mr. Lightfoot about trying to
12 work it out or going bankrupt, correct?
13 A. That's correct.
14 Q. So, that's a false statement, is it not?
01:26 15 A. I didn't mean it to be false, because I wasn't in the
16 process of declaring -- I was doing everything I could not to
17 file a bankruptcy. That's why I attempted for so long to do a
18 workout.
19 Q. But this is dated in January?
01:26 20 A. Right. We had not filed the bankruptcy.
21 Q. You hadn't filed yet.
22 A. I think the letters may have just gone out previous to
23 that.
24 Q. Okay. Let's look at the next page, Page 291 -- sorry.
01:26 25 The page we just referenced was Page 290?

01:26 1 A. Right.

2 Q. Let's move to the next page.

3 "Financial condition, by signing this
4 authorization, I represent and warrant to lender that the
01:27 5 information provided above is true and correct and there has
6 been no material adverse change in my financial condition."

7 Now, there had been a material adverse change in
8 your financial condition, hadn't there, since the last time you
9 received the loan from the bank?

01:27 10 A. I probably stood at the same amount of debt that I had when
11 I got the loan, but was I now in the process of trying to work
12 out a settle -- a payoff, yes.

13 Q. I'm sorry, sir. Maybe it's the way I asked the question.
14 Let me try it again.

01:27 15 Since your last -- since the last time you took
16 an extension on this loan, your financial condition had stayed
17 the same or deteriorated; it hadn't gotten any better, had it?

18 A. Hadn't gotten any better, that's correct.

19 Q. So, if you were in the banker's shoes, you would have no
01:27 20 reason to know that you were contemplating bankruptcy or
21 contacting bankruptcy counsel, because you have checked off on
22 this sheet that there's been no material change, correct?

23 A. I would have to object to that question. You're asking me
24 to presuppose my --

01:28 25 Q. You're right and -- you're correct, and I withdraw the

01:28 1 question.
2 A. Thank you.
3 Q. That is Page 291.
4 A. Right.
01:28 5 Q. Well, we know that Regions Bank eventually was given notice
6 of the bankruptcy, as were all --
7 A. They were.
8 Q. -- the other unsecured creditors, correct?
9 A. They were.
01:28 10 Q. But by then, Regions Bank had already given you a loan and
11 two extensions, correct?
12 A. Yes, sir.
13 Q. And when your bankruptcy --
14 MR. FINDER: I'm referring to Exhibit 1, Bates
01:28 15 Number 27.
16 BY MR. FINDER:
17 Q. When the trustee filed its final report in your bankruptcy,
18 where it says this case is completed, final meeting of
19 creditors, et cetera, it lists Regions Bank, does it not,
01:29 20 Number 23?
21 A. Yes, sir.
22 Q. And Regions Bank is getting a percentage of its outstanding
23 debt as an unsecured creditor at 34.55 percent, correct?
24 A. Right.
01:29 25 Q. Which means Regions Bank only got \$1,782.43 in this

01:29 1 bankruptcy, correct?

2 A. That's -- that's exactly what those documents show.

3 Q. But, again, when you applied for the last extension,

4 Regions Bank had no idea that you were -- that you were

01:29 5 discussing your financial condition with bankruptcy counsel,

6 correct?

7 A. They did not.

8 Q. Regions Bank didn't ask you for any kind of collateral to

9 collateralize the loan or move itself up from an unsecured

01:29 10 creditor to a higher level, did it?

11 A. No. Mr. Butler was a friend. No, they didn't.

12 Q. Mr. Butler, for the record, is Ed Buddy Butler, correct?

13 A. Yes.

14 Q. And you didn't tell him Mr. -- even though he was a friend,

01:29 15 you didn't tell him that you were having financial problems,

16 did you?

17 A. No, I did not.

18 Q. In fact, you and Mr. Butler even go to the same church,

19 right?

01:30 20 A. I can't say we haven't been to a church together. I don't

21 know that we go to the same church. It's possible.

22 Q. Okay.

23 A. I may have seen Buddy.

24 Q. Moving on, back to the workout letters that Mr. Lightfoot

01:30 25 sent out -- and, again, we're talking about Exhibit 5.

01:30 1 A. Uh-huh.
2 Q. With the exception of Regions Bank?
3 A. Right.
4 JUDGE LAKE: What exhibit are you looking at now?
01:30 5 MR. FINDER: Exhibit 5.
6 JUDGE LAKE: Okay.
7 MR. FINDER: I am going to work backwards. We just
8 talked about 5, and we're on it again.
9 JUDGE LAKE: All right.
01:31 10 A. Is that Exhibit 5, counselor?
11 BY MR. FINDER:
12 Q. Yes, sir.
13 A. Or your Bates Number 5?
14 Q. No. Exhibit 5, Bates Number 296.
01:31 15 A. Okay. I just -- I saw an "SC" up at the top.
16 Q. And I think we may have discussed this briefly; but
17 Mr. Lightfoot listed approximately a hundred eighty -- a little
18 over \$182,000 in unsecured credit card --
19 A. Right. Right.
01:31 20 Q. Right?
21 When bankruptcy was filed and then your amended
22 bankruptcy, you have Schedule F --
23 A. Right.
24 Q. -- from Exhibit 1, Bates Number 102; and here Mr. Lightfoot
01:31 25 actually lists every single credit card that you've told him

01:31 1 about, right?
2 A. Yes, sir.
3 Q. Because he can't list credit cards that he doesn't know
4 about, he relies on you and/or Mrs. Porteous to give him the
01:32 5 financial picture so he can make a true and correct listing on
6 here?
7 A. That's correct.
8 Q. Of course, Fleet, as we determined earlier, is not on it?
9 A. It's not on it.
01:32 10 Q. Okay. I believe -- and just by manual counting, there are
11 now 15 credit cards. And I -- you can take my word for it or
12 I'll hand you the exhibit and you can count them up.
13 A. I have no reason to doubt your representation.
14 Q. And now -- and now Regions Bank --
01:32 15 A. Right.
16 Q. -- is also listed, for \$5,000, correct?
17 A. Yes, sir.
18 Q. More importantly, the amount of unsecured debt has gone up
19 to 196,000, correct?
01:32 20 A. Yes, sir, that's what it says.
21 Q. That's from the workout letter, where it was less?
22 A. Whatever it was, yeah.
23 Q. You were a federal judge at this time, of course?
24 A. Right.
01:32 25 Q. And you filed a financial disclosure report for calendar

07:32 1 year 2000 and -- on May 10th, '01, correct?
2 A. Right.
3 Q. I'm referring to Exhibit 3, Bates Number 20 -- I'm sorry,
4 2 --
01:33 5 A. 00239.
6 Q. 239.
7 And this is your disclosure, is it not, sir?
8 A. Appears to be, of course.
9 Q. Well --
01:33 10 A. It is. I mean, it says it's me.
11 Q. Let's look at the last page, Bates Number 242.
12 A. That's me.
13 Q. That's your signature, right?
14 A. (Nodding head).
01:33 15 Q. Okay. Now, here, under Section VI -- Roman Numeral VI, I
16 believe, "Liabilities" --
17 A. Yes, sir.
18 Q. -- you list but two credit cards: MBNA credit card, Value
19 Code J; and Citibank credit card, Value Code J?
01:33 20 A. Right.
21 Q. And the legend on the bottom that has "Value Code" says,
22 "J, \$15,000 or less," correct?
23 A. Right.
24 Q. So, according to your financial disclosure, your
01:34 25 liabilities did not exceed \$30,000, correct?

01:34 1 A. According to the disclosure.
2 Q. Okay. Now, according to the disclosure, you have to
3 certify these. Isn't that right, Judge?
4 A. Right. Right.
01:34 5 Q. And I believe it says, "I certify that all information
6 given above, including information pertaining to my spouse and
7 minor dependent children, if any, is accurate, true, and
8 complete to the best of my knowledge and belief, and that any
9 information not reported was withheld because it met applicable
01:34 10 statutory provisions permitting nondisclosure," with your
11 signature and signed on the 10th of May, 2001, correct?
12 A. Yes, sir.
13 Q. It also says that, "Any individual who knowingly and
14 willfully falsifies or fails to file this report may be subject
01:35 15 to civil and criminal sanctions," citing -- citing 5 United
16 States Code Appendix, Section 104, which I believe we covered
17 earlier this morning, correct?
18 A. I believe we did.
19 Q. All right. Well, Judge Porteous, you listed, as I said,
01:35 20 two credit cards, which you have admitted to, MBNA and Citi?
21 A. Right.
22 Q. In fact, if we go back to Schedule F of Exhibit 1, starting
23 on Bates Number 102, you have not just a Citibank account; but
24 you have -- one, two -- three Citibank accounts, right?
01:35 25 A. There are three accounts. I don't know if they were in my

01:35 1 name or my wife's; but, yeah, there were three Citi. That's
2 what listed.

3 Q. Right. But, again, you filed jointly?

4 A. Yeah. But I'm just saying I -- there are three accounts
01:35 5 listed. You're correct.

6 Q. The first one under Number 4 -- the next one under 4, is
7 \$23,987 and change, correct?

8 A. I can't see it because your arm is there.

9 Q. I'm sorry.

01:36 10 A. But, again, whatever is reflected is reflected.

11 Q. The second one to Citi is \$20,719.58?

12 A. Right.

13 Q. The third one is -- the third Citi account --

14 A. Right.

01:36 15 Q. -- 17,711.35.

16 These are both on Pages 102 and 103 of the
17 exhibit, that being Exhibit 1.

18 Similarly, going back, you say -- you list an
19 MBNA credit card, again, just like Citi, \$15,000 or less debt.

01:36 20 Now, the debts for all of the three Citi accounts
21 exceeded 15,000, didn't they?

22 A. Yes, sir.

23 Q. MBNA does have one less than 15,000. It has one for
24 \$3,212.80, right?

01:37 25 A. Yes.

01:37 1 Q. But it also has a second one at \$30,931.02, correct?
 2 A. Yes, sir.
 3 Q. Therefore, Judge Porteous, your certification of the -- of
 4 your liabilities that you signed on April 10th --
 01:37 5 A. May 10th.
 6 Q. I'm sorry. May 10th. Forgive me.
 7 -- was false, correct?
 8 A. It was not correct. It was not accurate, correct.
 9 JUDGE BENAVIDES: Which of the financial reports --
 01:38 10 which year are you --
 11 CHIEF JUDGE JONES: Year 2000.
 12 JUDGE BENAVIDES: 2000 -- of course, if it was filed
 13 in 2001, it would refer to the calendar year ending 2000.
 14 MR. FINDER: Correct.
 01:38 15 JUDGE BENAVIDES: All right.
 16 MR. FINDER: For calendar year 2000, that is on
 17 Page 239. That is correct, your Honor.
 18 BY MR. FINDER:
 19 Q. Judge Porteous, over the years, how much cash have you
 01:38 20 received from Jake Amato and Bob Creely or their law firm?
 21 A. I have no earthly idea.
 22 THE REPORTER: I'm sorry?
 23 MR. FINDER: I'm sorry. Jake Amato, A-M-A-T-O. Jacob
 24 Amato, Robert Creely, C-R-E-E-L-Y, or their law firm.
 01:39 25 BY MR. FINDER:

01:39 1 Q. Amato & Creely, I believe they are called.
2 A. Right.
3 Q. Is that correct?
4 A. Yeah.
01:39 5 Q. You do not know how much you've received from them?
6 A. I do not.
7 Q. Those men or their -- and/or their firm, correct?
8 A. That's correct.
9 Q. It could have been \$10,000 or more. Isn't that right?
01:39 10 A. Again, you're asking me to speculate. I have no idea is
11 all I can tell you.
12 Q. When did you first start getting cash from Messrs. Amato,
13 Creely, or their law firm?
14 A. Probably when I was on state bench.
01:39 15 Q. And that practice continued into 1994, when you became a
16 federal judge, did it not?
17 A. I believe that's correct.
18 Q. Now, when Messrs. Amato and Creely -- and I'm only talking
19 about them right now --
01:39 20 A. I understand.
21 Q. -- and their law firm, not -- we'll talk about others
22 later. But when those men gave you money, did you consider it
23 a gift or a loan or income?
24 A. I never considered it income. It was either a gift or a
01:40 25 loan.

01:40 1 Q. Okay. If it was a loan, did you ever pay it back?
2 A. No, I didn't.
3 Q. Then, it became income, correct?
4 A. I don't know.
01:40 5 Q. Well, again, your Honor, I don't want to argue with you;
6 but --
7 A. I'm not arguing with you.
8 Q. -- if I loan you a hundred dollars and you don't pay it
9 back, that becomes income, correct?
01:40 10 A. It still may be a gift.
11 Q. If it was a loan and it's not forgiven as a gift, then it's
12 income, correct?
13 A. Right.
14 Q. But none of that ever appeared in your federal tax
01:40 15 return --
16 A. No --
17 Q. -- as income, correct?
18 A. -- it did not.
19 Q. Now, if it was a gift, it would have been on your financial
01:40 20 disclosure reports for 1994, which starts at Bates 215; 1995,
21 which starts at Bates 219; 1996, which starts at Bates 223;
22 1997, which starts at Bates 227; 1998, Bates 231; through 1999,
23 Bates 235, which we already reviewed.
24 I could show you these, Judge Porteous; but I'll
01:41 25 just ask you the question. Did you ever list any gifts from

01:41 1 Amato or Creely, cash gifts, in any of these financial
2 disclosures?
3 A. No.
4 Q. But you certified every one as being true and correct?
01:41 5 A. Correct.
6 Q. And there was an omission, then, correct?
7 A. Not that I'm aware of.
8 Q. Well, if someone gave you money during those years and it
9 was more than \$250, wouldn't that be reportable?
01:41 10 A. I do not recall receiving any cash from them during that --
11 Q. Do you recall in 1999, in the summer, May, June, receiving
12 \$2,000 for them?
13 A. I've read Mr. Amato's grand jury testimony. It says we
14 were fishing and I made some representation that I was having
01:42 15 difficulties and that they loaned me some money or gave me some
16 money.
17 Q. You don't -- you're not denying it; you just don't remember
18 it?
19 A. I just don't have any recollection of it, but that would
01:42 20 have fallen in the category of a loan from a friend. That's
21 all.
22 Q. Has the loan ever been paid back --
23 A. No.
24 Q. -- if you got it?
01:42 25 A. No.

01:42 1 JUDGE BENAVIDES: Were any loans reported on the
2 disclosure statements?
3 MR. FINDER: No, sir.
4 THE WITNESS: I believe -- I'm not sure, but I don't
01:42 5 know the reported amount on the loans.
6 JUDGE BENAVIDES: But whether a loan or a gift, it
7 wasn't -- it wasn't --
8 THE WITNESS: It wasn't reported.
9 JUDGE BENAVIDES: -- to the extent that they might
01:42 10 exist, they weren't reported, either as a loan or a gift?
11 THE WITNESS: That's correct, Judge.
12 MR. FINDER: Right.
13 BY MR. FINDER:
14 Q. The exhibits that I just talked about, the years 1994
01:42 15 through '99, all have sections on liabilities and those are not
16 reported?
17 A. That's right.
18 Q. If I misstate, please correct me.
19 A. No. You're correct.
01:43 20 Q. Other than gifts of cash, did you ever fail to report --
21 from lawyers or others, not just Creely and Amato or their law
22 firm, but anybody else, not including your personal family
23 members -- cash gifts for entertainment or family needs,
24 including but not limited to hunting trips, fishing trips,
01:43 25 airfare, lodging, dining, trips out of the country or out of

01:43 1 state, such as Washington, D.C. or Las Vegas, parties for your
2 children, stipends for your children, tuition for your
3 children, car notes, mortgage payments, or gambling expenses
4 for you or your wife?

01:43 5 A. I'm sure I didn't include anything on that.

6 Q. And I have the reports here if you want to refresh your
7 recollection.

8 A. I understand.

9 Q. Did you ever report gifts that your court staff may have
01:43 10 received along with you, such as dining, travel, or
11 entertainment?

12 A. I'm sure I didn't.

13 Q. And I could go through that for every one of these
14 reporting years, but would that be -- your answer be the same
01:44 15 for years 1994, 19 -- through 1999 inclusive?

16 A. I absolutely agree that that's what those documents show
17 and certify.

18 JUDGE BENAVIDES: You're referring to the same
19 questions as to reporting on those other years?

01:44 20 MR. FINDER: Yes, sir.

21 JUDGE BENAVIDES: All right. Counsel, with respect to
22 that last question, was -- was there an exception -- I thought
23 there was a report of a couple of fishing -- hunting trips or
24 fishing trips.

01:45 25 MR. FINDER: I believe those were Bar -- related to

01:45 1 Bar associations, but let me look quickly so I don't make a
2 mistake.
3 JUDGE BENAVIDES: I thought there were a couple of
4 trips that he reported, at least in the exhibits that I saw.
01:45 5 MR. WOODS: Two hunting trips.
6 JUDGE BENAVIDES: Two hunting trips.
7 MR. WOODS: Rowan and the other --
8 THE REPORTER: I'm sorry?
9 MR. WOODS: I'm sorry.
01:45 10 THE WITNESS: There were two included in the original
11 complaint filed by Justice, but not included in the ultimate
12 charge from the Court.
13 BY MR. FINDER:
14 Q. In the documents that I referred to, I didn't see hunting
01:46 15 trips. I've seen reimbursements from Bar associations, but not
16 hunting trips; and if I missed it, please correct me.
17 A. We had --
18 MR. WOODS: Judge Porteous is correct. There are two
19 instances on his financial disclosure forms where he reports a
01:46 20 Rowan -- Rowan Drilling Company trip.
21 THE WITNESS: "Rowan." Yeah.
22 MR. WOODS: And one other, Diamond.
23 THE REPORTER: I'm sorry?
24 THE WITNESS: Diamond.
01:46 25 MR. WOODS: Diamond Drilling Company.

01:46 1 JUDGE BENAVIDES: So, with those exceptions, there was
2 no reports --

3 MR. WOODS: Yes.

4 JUDGE BENAVIDES: -- of loans or gifts or anything
01:46 5 with respect to hunting trips or any of these other things,
6 with the exceptions of those ones?

7 MR. WOODS: That's correct. There are none except
8 those two.

9 MR. FINDER: And I'm still looking, and I haven't seen
01:47 10 them. So, I'm not sure if it's for these years or not; but I
11 think --

12 JUDGE BENAVIDES: I don't know. It may be a
13 different reporting period.

14 *(Sotto voce discussion between counsel)*

11:59 15 BY MR. FINDER:

16 Q. Judge Porteous, I'm going to show you from Exhibit 20 --

17 MR. FINDER: Bates Number 585, your Honors. Let me
18 make this smaller.

19 BY MR. FINDER:

01:48 20 Q. Do you recognize this, sir, a casino credit application for
21 Harrah's casino?

22 A. Yes, sir, that's what it says.

23 Q. Okay. And the purpose of this is what?

24 A. To be able to sign markers.

01:48 25 Q. Correct.

01:48 1 And it is dated April 30th, 2001, correct?

2 A. Right.

3 Q. And that is just two days -- three days -- March has 31

4 days -- three days after bankruptcy, correct?

01:48 5 A. Yes, sir.

6 No. Wait.

7 MR. WOODS: April.

8 BY MR. FINDER:

9 Q. April. I'm sorry.

01:48 10 After your -- forgive me. After your amended

11 petition, it was a couple -- two and half, three weeks after

12 your amended petition?

13 A. Yes, sir.

14 Q. You list under "Financial Information" income of over a

01:48 15 hundred thousand --

16 A. Right.

17 Q. -- in salary.

18 Over \$250,000 in a home?

19 A. Right.

01:48 20 Q. Indebtedness, zero, correct?

21 A. That's not my handwriting. I don't -- I don't know who

22 filled that out.

23 Q. Is this your handwriting?

24 A. That is.

01:49 25 Q. So, you don't know --

01:49 1 A. That is not my handwriting.
2 Q. Well, when you signed this, was there anything on there?
3 Did somebody put it on there after you signed it?
4 A. I have -- cannot tell you that. I don't know that. But
01:49 5 that is not my handwriting.
6 Q. And --
7 A. If I look at the rest of it, I can tell you if it is.
8 Q. Well -- (Indicating).
9 A. The rest of it -- now, don't -- okay. You get towards the
01:49 10 top, that's --
11 JUDGE BENAVIDES: There's a certification above your
12 handwriting. "I certify that I reviewed all the information
13 provided above and it is true and accurate."
14 THE WITNESS: I don't -- yeah, Judge. I'm just saying
01:49 15 it's not my handwriting is all.
16 BY MR. FINDER:
17 Q. So, even though it's certified as being true and correct,
18 you don't take responsibility for the indebtedness --
19 A. I don't know that that was on there when I signed it. I
01:49 20 just don't have any recollection.
21 Q. We talked about Messrs. Creely and Amato and their law
22 firm, the law firm of Creely & Amato.
23 A. Right.
24 Q. Mr. Creely is what kind of a lawyer? What kind of a
01:50 25 practice would you say he has?

01:50 1 A. Over the years, I think it's changed. Now he -- he was
2 in -- for awhile into multidistrict litigation, complex
3 litigation, class action type litigation.
4 Q. Mr. Amato started off pretty much as a personal injury
01:50 5 lawyer, didn't he?
6 A. Yeah.
7 Q. And throughout most of his career considered himself --
8 A. I think he was a personal injury lawyer. I never knew Jake
9 to take a divorce case or anything like that.
01:50 10 Q. And nor did he practice that often in federal court,
11 correct? As far as you know?
12 A. As far as I know.
13 Q. Other than Messrs. Creely and Amato and their law firm, we
14 talked about other lawyers in this case, such as Mr. Levenson.
01:51 15 Have you received any cash from Mr. Levenson?
16 A. No, not that I -- to the best of my knowledge, I have never
17 received any cash from Mr. Levenson.
18 Q. But Mr. Levenson, along with Messrs. Creely and Amato, it
19 would not be uncommon for them to take you out to lunch?
01:51 20 A. That's correct.
21 Q. And -- or dinners?
22 A. Yeah. On an occasion, I would think, yeah.
23 Q. Well, Mr. Levenson took you out to some places for lunch
24 or -- and/or dinner, such as Ruth's Chris or, before Hurricane
01:51 25 Katrina, Smith & Wollensky's. Isn't that correct?

... 51 1 A. I'm sure that's correct.
2 Q. And some -- and you were never -- you never paid, did you?
3 A. No.
4 Q. Now, other than Messrs. Amato and Creely, who else had --
01:52 5 what other lawyers -- lawyer friends of yours have given you
6 money over the years?
7 A. Given me money?
8 Q. Money, cash.
9 A. Gardner may have. Probably did.
01:52 10 Q. Let's talk about --
11 A. But I don't recall any others.
12 Q. Let's talk about Mr. Gardner.
13 A. All right.
14 Q. He's also a -- he was a divorce lawyer, wasn't he?
01:52 15 A. Mr. Gardner tries to do everything.
16 Q. So, if he said that he's a family lawyer, he -- that would
17 be --
18 A. I think that's what his practice is now.
19 Q. But not -- as far as you know, his practice is not
01:52 20 primarily in federal court?
21 A. No, not that I'm aware of.
22 Q. And when is the last time Mr. Gardner gave you money?
23 A. Before I took the federal bench, I'm sure.
24 Q. Okay. And do you recall how much?
01:52 25 A. Absolutely not.

01:52 1 Q. Now, when you were a state judge, did you ever report any
2 of these cash gifts on your Louisiana disclosure forms?
3 A. No. I don't think we actually received forms, but I don't
4 remember that.

01:53 5 Q. Okay.
6 A. Whether you received a form like the federal government,
7 where you have to fill it out, I don't believe they had
8 reporting forms at the time. I know what the statute says, but
9 I don't think it's like it is in federal court.

01:53 10 Q. Before you became a federal judge, you used -- as a state
11 judge, you used to send something called "curatorships" over to
12 the Creely-Amato firm, did you not?
13 A. And Gardner and all those, yeah.

01:53 14 Q. Just talking about Creely and Amato and their law firm
15 right now. You would occasionally, after sending them
16 curatorships -- and for the record, what is a -- how would you
17 describe a curatorship?
18 A. It's for an absent defendant. It could be in a variety of
19 situations. The most common two are executory process and then
01:53 20 interdiction.
21 Q. And after receiving curatorships, Mr. -- Messrs. Creely
22 and/or Amato and/or their law firm would give you money,
23 correct?
24 A. Occasionally.

01:54 25 Q. You mentioned before that you read the grand jury

01:54 1 transcript of Mr. Amato and were familiar with his allegations
2 about a fishing trip?

3 A. Right.

4 JUDGE BENAVIDES: Are you leaving the curatorship?

01:54 5 MR. FINDER: Yes, sir.

6 JUDGE BENAVIDES: You had an open-ended question about
7 whether he received money from these people after they were
8 appointed a curatorship.

9 MR. FINDER: Yes, sir.

01:54 10 JUDGE BENAVIDES: Do you intend to establish any
11 relationship between the receipt of money and the curatorship?

12 MR. FINDER: Not through this witness.

13 JUDGE BENAVIDES: Okay.

14 MR. FINDER: But if the Court has questions --

01:54 15 JUDGE BENAVIDES: I just didn't know whether to -- I
16 don't want to interrupt you --

17 MR. FINDER: That's all right.

18 JUDGE BENAVIDES: -- or your train of thought about it
19 but --

01:54 20 MR. FINDER: Okay. Well, let -- well, we'll -- so I
21 won't have it open-ended, let me ask the question.

22 JUDGE BENAVIDES: Go ahead.

23 BY MR. FINDER:

24 Q. During the time you were giving Creely and Amato and the
01:55 25 law firm curatorships and you were getting cash back, was that

01:55 1 cash that you received a kickback for the curatorship, in your
2 mind?

3 A. No, sir.

4 Q. Not in your mind?

01:55 5 A. Not in my mind.

6 JUDGE BENAVIDES: Let me ask a question. According --
7 and it's -- you have been afforded the grand jury testimony, we
8 have seen the grand jury testimony, everybody has seen the
9 grand jury testimony. But it would seem that there is

01:55 10 testimony before the grand jury that there was a return in the
11 exact same amount, minus expenses, of the curatorship that was
12 returned to you, according to one of the witnesses.

13 THE WITNESS: That's apparently what it says. I
14 agree.

01:55 15 JUDGE BENAVIDES: Is that true or not?

16 THE WITNESS: Not -- to the best of my knowledge, that
17 is not correct.

18 JUDGE BENAVIDES: You would not know whether you would
19 receive the same money after appointing someone a curator that
01:55 20 he would get, minus his expenses?

21 THE WITNESS: I don't recall that occurring.
22 You're ask -- again, we're back to 1994 and before. I know I
23 sent them curators --

24 JUDGE BENAVIDES: You know, you have immunity --

01:56 25 THE WITNESS: I know.

01:56 1 JUDGE BENAVIDES: -- from all criminal prosecution --
2 THE WITNESS: I understand.
3 JUDGE BENAVIDES: -- except perjury.
4 THE WITNESS: I understand that.
01:56 5 JUDGE BENAVIDES: And your -- and, so, that would
6 be -- if it matched the expense -- the amount each time --
7 THE WITNESS: I don't --
8 JUDGE BENAVIDES: -- except for expenses, that would
9 be a coincidence?
01:56 10 THE WITNESS: I don't know if it matched each time.
11 That's all I can tell you, Judge. I don't know.
12 JUDGE BENAVIDES: I understand.
13 BY MR. FINDER:
14 Q. Didn't you start sending -- Judge Porteous, didn't you
01:56 15 start sending curatorships over to Mr. Creely when he demurred
16 to get -- give you more money?
17 A. I've read his testimony. I know that's what he says. I
18 just -- he "demurred."
19 Q. Maybe I'll use a different word instead of "demurred."
01:57 20 A. "Refused."
21 Q. Objected to or refused to give you more money, isn't that
22 when the curatorships started?
23 A. I don't know the date the curatorships started; so, I can't
24 tell you that.
01:57 25 Q. Do you recall --

01:57 1 A. I don't remember when I first started sending them.
2 Q. Do you recall calling Mr. Creely's secretary and saying,
3 "How much have you received in curatorships" before asking for
4 money?
01:57 5 A. I don't recall calling her. I'm not saying I've never
6 spoken with his secretary.
7 Q. Do you recall Mr. Creely refusing to pay you money before
8 the curatorships started?
9 A. He may have said I needed to get my finances under control,
01:57 10 yeah.
11 Q. And the curatorships, therefore, would be a source of
12 income for Mr. Creely -- to pass through Mr. Creely and his
13 firm to you, correct?
14 A. That's a speculation or opinion. I don't -- I don't know
01:57 15 what you want to call it.
16 Q. What is your recollection in May or June of 1999 of going
17 on a fishing trip with Mr. Amato? Do you recall going on a
18 fishing trip?
19 A. I know I went with Jake on a trip with Mitch Mullin.
01:58 20 Q. Actually, you went on a lot of fishing trips with Amato and
21 Creely, mainly Creely.
22 Have you heard of a place called Delacroix?
23 A. Oh, yeah, "Delacroix."
24 Q. "Delacroix." Excuse me for my mispronunciation.
01:58 25 That's property that he either owned or had a

58 1 lease on, correct?
2 A. Correct.
3 Q. And fishing would often take place there, correct?
4 A. Oh, yeah.
01:58 5 Q. And not just you but other elected officials would be
6 invited?
7 A. The judges, yes.
8 Q. And you went fishing there numerous times?
9 A. Over the years?
01:58 10 Q. Yes.
11 A. Yeah.
12 Q. You never were charged for any mode of --
13 A. No, sir.
14 Q. -- transportation, any refreshments, things of that nature?
01:58 15 A. No, sir.
16 Q. All right. So, getting back to the fishing trip with
17 Mr. Amato in May or June of 1999, which you -- which you
18 referenced, you brought up, Mr. Amato -- do you recall telling
19 Mr. Amato in a very emotional way that you had a wedding coming
01:59 20 up and you needed cash?
21 A. I did have a wedding coming up. You're asking me if I -- I
22 don't recall a conversation with Jake.
23 Q. Who was getting married?
24 A. Timmy.
01:59 25 In '99?

01:59 1 Q. Yes.
2 A. Timmy.
3 Q. Your son Timmy?
4 A. Right.
01:59 5 Q. And that's the bachelor party you also went to in
6 Las Vegas. We'll get --
7 A. That's correct.
8 Q. -- to in a moment. Correct?
9 A. Correct.
01:59 10 Q. Well, whether or not you recall asking Mr. Amato for money
11 during this fishing trip, do you recall getting an envelope
12 with \$2,000 shortly thereafter?
13 A. Yeah. Something seems to suggest that there may have been
14 an envelope. I don't remember the size of an envelope, how I
01:59 15 got the envelope, or anything about it.
16 Q. Do you recall sending Rhonda Danos over to get the
17 envelope?
18 A. Rhonda has gone to Jake and Bob's office on numerous
19 occasions. I don't even know if she went in '99.
02:00 20 Q. Judge, I know 1999 was almost a decade ago; but if you
21 received an envelope from lawyers -- a sealed envelope that had
22 a couple thousand dollars cash in it, do you think you would
23 remember that?
24 A. That's what I'm saying. I don't know if it was a sealed
02:00 25 envelope, a bank envelope, or what.

01:00 1 Q. Okay. Let me --
2 JUDGE LAKE: Wait a second. Is it the nature of the
3 envelope you're disputing?
4 THE WITNESS: No. Money was received in envelope.
02:00 5 JUDGE LAKE: And had cash in it?
6 THE WITNESS: Yes, sir.
7 JUDGE LAKE: And it was from Creely and/or --
8 THE WITNESS: Amato.
9 JUDGE LAKE: -- Amato?
02:00 10 THE WITNESS: Yes.
11 JUDGE LAKE: And it was used to pay for your son's
12 wedding?
13 THE WITNESS: To help defray the cost, yeah.
14 JUDGE LAKE: And was used --
02:00 15 THE WITNESS: They loaned -- my impression was it was
16 a loan.
17 JUDGE LAKE: And would you dispute that the amount was
18 \$2,000?
19 THE WITNESS: I don't have any basis to dispute it.
01:05 20 JUDGE LAKE: All right. Thank you.
21 BY MR. FINDER:
22 Q. Your impression was that it was a loan was what you just
23 said, correct?
24 A. Yes.
02:00 25 Q. Did you ever pay back the loan?

00:00 1 A. No, I didn't. I declared bankruptcy in 2001; and, of
2 course, I didn't list it.
3 Q. But it wasn't listed as paid --
4 A. No, it wasn't listed.
02:01 5 Q. So, did you ever pay back the loan --
6 A. No.
7 Q. -- was my question.
8 A. No.
9 Q. Then, it was income. Is that right?
02:01 10 A. You're saying it's income. If that's what the rules
11 provide --
12 Q. Sir, I don't say anything. I'm asking you a question.
13 If it's a loan and it's not paid back, you're a
14 federal judge, you know some law --
02:01 15 A. It's income.
16 Q. -- it's income, right?
17 A. All right.
18 Q. But it was never reported on your tax returns, was it?
19 A. No, it was not.
02:01 20 Q. It was never reported on the judicial disclosure form under
21 "Other Income," was it?
22 A. No.
23 Q. Let's talk about the bachelor party.
24 A. All right.
02:01 25 Q. In approximately May of 1999, your son Timmy was going to

01:01 1 get married that summer, correct?
2 A. Right.
3 Q. And Rhonda, I believe, even helped with the arrangements
4 for a party, for you, some of your lawyer and non-lawyer
02:01 5 friends, and Timmy to go to Las Vegas, correct?
6 I believe you stayed at New York-New York?
7 A. No. I believe we stayed at Caesars.
8 Q. Was it Caesars? Maybe it was just the ride at New York-New
9 York. There was a picture taken. Do you remember that?
02:02 10 A. Yeah, there was a -- some kind of amusement there.
11 Q. Now, lawyers paid for you to go, did they not? They gave
12 you money to go on that trip, did they not?
13 A. I believe the allegations are that there was a ticket that
14 Forstall had purchased at some point, that I used.
02:02 15 Q. Mr. Forstall is Chip Forstall, right?
16 A. Right.
17 Q. He gave you a ticket; and then he ended up not going,
18 correct?
19 A. Not for this trip. This was another trip.
02:02 20 Q. Okay. The other trip was to San Francisco, I believe; and
21 he didn't go?
22 A. None of us went.
23 Q. Okay. But you had the ticket?
24 A. Right.
02:02 25 Q. And you used that ticket, you're saying, to go to

02:02 1 Las Vegas?

2 A. I may have.

3 Q. Well, once you get to Las Vegas, you have to stay in a

4 room, right?

02:02 5 A. Right.

6 Q. You didn't pay for the room, did you?

7 A. It appears I did not.

8 Q. And do you know who paid for it?

9 A. It appears Mr. Creely paid for it.

02:02 10 Q. Mr. Creely, that's right.

11 Now, that was over a period of approximately four

12 days, as I recall, from the records?

13 A. Three or four.

14 Q. Three or four.

02:03 15 That exceeded \$250 total for the room, correct?

16 A. Yeah.

17 Q. Did that ever appear on your judicial --

18 A. No, it did not.

19 Q. -- your form that you file with the administrative office?

02:03 20 A. No, it did not.

21 Q. It did not.

22 Although you considered that a gift, correct?

23 A. Yeah, it was a gift. I mean, Creely got there before we

24 all did. I know he checked me in.

02:03 25 Q. And it wasn't just for you. It was also for Timmy?

02:03 1 A. What?
2 Q. Timmy stayed for free?
3 A. Not because of Mr. Creely.
4 Q. Well, somebody paid for Timmy, right?
02:03 5 A. I went down and asked the casino to comp their room, and I
6 think they did.
7 Q. So, if -- so, it's your testimony here today it was not
8 Mr. Creely or one of your other friends that picked up the tab
9 for his room?
02:03 10 A. Not that I -- for Timmy's room?
11 Q. For Timmy.
12 A. No, sir, not that I'm aware of.
13 I'm trying to remember who was in that room.
14 Probably all my sons were in that room.
02:04 15 Q. And when you were in Las Vegas, you had to eat?
16 A. Yes.
17 Q. And you didn't just eat in the hotel you were staying at;
18 you ate in other places, too, correct?
19 A. We had one outside meal that I can recall.
02:04 20 Q. But you didn't pay for that meal, did you?
21 A. No, I did not.
22 Q. Who paid for it?
23 A. A variety -- I think Creely did and maybe some other people
24 picked up various portions.
02:04 25 Q. But the bottom line is that wasn't comped?

02:04 1 A. That was not comped.
2 Q. And when I say "comped," I'm talking about complimentary --
3 A. No.
4 Q. -- where a hotel --
02:04 5 A. No.
6 Q. -- would pick up the fee, correct?
7 A. No.
8 Q. And nothing from that trip to Las Vegas, for you and your
9 sons -- who was your other son, by the way, that went?
02:04 10 A. Michael.
11 Q. Michael.
12 Nothing that went to you or your two children, in
13 your immediate family, was ever reported under a judicial
14 disclosure form, correct?
02:05 15 A. No, sir.
16 JUDGE BENAVIDES: How old were the children at that
17 time?
18 MR. FINDER: I'm sorry?
19 JUDGE BENAVIDES: How old were the boys at that time?
02:05 20 THE WITNESS: Give me a second, Judge. '99?
21 JUDGE BENAVIDES: Oh, let me ask --
22 THE WITNESS: 28, 26, and 23.
23 JUDGE BENAVIDES: Okay. They weren't dependents
24 living at home?
02:05 25 THE WITNESS: Oh, no, sir.

02:05 1 JUDGE BENAVIDES: All right.
2 JUDGE LAKE: Did Mr. Creely or Mr. Amato or the other
3 attorneys reimburse the casino for any gambling losses you had,
4 Judge?
02:05 5 THE WITNESS: Absolutely not.
6 BY MR. FINDER:
7 Q. Let me jump ahead, then, in light of that question. On
8 Exhibit 48 -- I believe it's 48 -- yeah, Bates Number 997, 998,
9 the records from Caesar -- I believe that is from Caesars
02:06 10 Palace.
11 A. All right.
12 Q. May 20th, 1999, that's when you were in Las Vegas for the
13 bachelor party, correct?
14 A. I believe so.
02:06 15 Q. Okay. Well --
16 A. May -- I know we went '99. It's before the wedding.
17 That's the right date.
18 Q. I mean --
19 A. It's before the wedding.
02:06 20 Q. For the record, that's your name, correct?
21 A. Right.
22 Q. And that's the city where you live, correct?
23 A. Right.
24 Q. And were you also there in October of '99?
02:06 25 A. Certainly appears that I was.

07:06 1 Q. Okay. Well, let's talk about May.
2 A. All right.
3 Q. May 20th, 1999, looks like gambling losses of \$1200,
4 correct?
02:06 5 MR. FINDER: And we're going to follow up with a
6 summary witness on this, but I wanted to jump ahead.
7 JUDGE BENAVIDES: I don't know if you got a response
8 to that last question.
9 MR. FINDER: I'm going to clarify it with the next
02:07 10 page.
11 BY MR. FINDER:
12 Q. In all fairness, since -- I should have asked you this
13 question, Judge. Forgive me.
14 A. All right.
02:07 15 Q. Have you ever seen this record before?
16 A. If it's one of the exhibits, I know you sent it to me.
17 Q. Yes. It's from Exhibit 48.
18 A. Okay. But I don't recall -- I didn't look at it. If you
19 sent it to me, I've got it.
02:07 20 Q. Okay. The very next page, Bates Number 998 --
21 A. All right.
22 Q. -- the same exhibit, 48 --
23 A. Fine.
24 Q. -- it shows from the period May 20 to May 22. And on the
02:07 25 prior page, we were talking about May 20. So, that's

02:07 1 consistent, correct?
2 A. All right. All right.
3 Q. "Win/loss," and it shows negative -- or 1,200 with a minus
4 sign, correct?
02:08 5 A. Yeah.
6 Q. Would that suggest to you that's a loss of \$1200?
7 A. It appears to be.
8 Q. Okay.
9 A. Okay. Wait. Let me just see something.
02:08 10 Okay. All right.
11 Q. For the record, that's the number, "998"?
12 A. Yeah.
13 Q. Now, as you said, you were only in Las Vegas for about
14 three or four days, right?
02:08 15 A. Yeah.
16 Q. Okay. Let's look at your Fidelity Bank statement for
17 May 25th. Shows a deposit of \$5,000?
18 A. Correct.
19 Q. Was that -- were those winnings?
02:08 20 A. They were.
21 Q. So, you won at some casino, even though it wasn't the one
22 we just looked at?
23 A. I was able to bring that much money home, but it was still
24 owed on credit cards. So, I -- when you say it was a winning,
02:08 25 I basically broke even when you added it all up.

02:08 1 Q. So, let's get this straight. You've -- your amended
2 petition was filed -- or your bankruptcy, was filed in 2000.
3 About six months -- or nine months, perhaps, before that, you
4 were in Las Vegas, gambling, and you came back with \$5,000
02:09 5 after you lost about 1200 at a different casino, correct?
6 A. I don't know if it's a different casino.
7 Q. It could have been the same one?
8 A. Could have been the same one.
9 Q. Well, but the records don't show winnings, do they?
02:09 10 A. You know -- well, when you're playing at a table and
11 winning, casinos do not traditionally keep track of that.
12 That trip, if you have those records, I think
13 would probably establish that the markers I signed on the very
14 first night there were paid off that very same day; but they
02:09 15 don't show the -- how the money was given out. They just don't
16 do it that way. That's between the casinos and how they
17 transact business. You're not given a 1099.
18 So, all I can tell you is I did win.
19 Q. So, it's your testimony that that money, the 5,000, was
02:10 20 from gaming; it wasn't from lawyers or friends?
21 A. Came from no one.
22 Q. Okay.
23 JUDGE BENAVIDES: What was the difference? 3800,
24 roughly?
02:10 25 MR. FINDER: Yes, sir.

02:10 1 BY MR. FINDER:
2 Q. Judge, do you remember a case called "Liljeberg"?
3 A. I do.
4 Q. Very complex litigation, wasn't it?
02:10 5 A. I would say.
6 Q. As a matter of fact, before you got it, I think it went
7 through several district judges.
8 A. Oh, it went through a bunch of different judges.
9 Q. And, then, one day it ended up in your court; and you were
02:10 10 ultimately the trial judge, correct?
11 A. Right.
12 Q. That lawsuit, sir, was filed -- well, let's not guess.
13 Let me show you what's been marked as Exhibit 82.
14 Do you recognize this as the docket sheet for Liljeberg?
02:11 15 A. Exhibit 82.
16 Q. That's what I have up on the screen.
17 A. Yeah, that would be the docket sheet, which seems to
18 indicate it was filed in '93.
19 Q. What did I say?
02:11 20 A. May --
21 Q. I'm sorry. June 1, 1993. What did I say?
22 A. I don't know.
23 Q. I thought you --
24 A. No, no.
02:11 25 Q. -- said I misspoke.

02:11 1 Okay. Does this appear to be the docket sheet?
2 I'm happy to show it to you.
3 A. Yeah, it appears to be the docket sheet.
4 Q. All right. Let's look at the some of the lawyers on there.
02:11 5 We already talked about this gentleman, Joe -- Joseph Mole --
6 A. Right.
7 Q. -- correct?
8 A. Right.
9 Q. And Don Gardner?
02:11 10 A. Right.
11 Q. Now, Don Gardner, as you said, as far as you know, isn't a
12 federal court practitioner?
13 A. No, as far as I know.
14 Q. And this is a complex case?
02:11 15 A. Very complex.
16 Q. But he's your buddy and he's appearing for the plaintiff,
17 correct?
18 A. Correct.
19 Q. Let's look at some of the defense lawyers.
02:11 20 MR. WOODS: Appearing for the defense.
21 MR. FINDER: "Plaintiff, Lifemark."
22 MR. WOODS: Okay.
23 BY MR. FINDER:
24 Q. For the defendant in Liljeberg -- on -- this docket sheet
02:12 25 says "Defendant Liljeberg," correct?

02:12 1 A. Right.
2 Q. Jacob Amato?
3 A. Right.
4 Q. Who was -- unlike his partner Mr. Creely, who did MDL
02:12 5 cases, Mr. Amato typically didn't do this kind of case, did he?
6 A. I would think that's correct.
7 Q. You don't think I'm correct?
8 A. No. I would think that was correct.
9 Q. Oh, forgive me.
02:12 10 Lenny Levenson?
11 A. Correct.
12 Q. Also not typically trying these type of cases in federal
13 court, correct?
14 A. He -- maybe not federal court, but he did some fairly
02:12 15 complex litigation.
16 Q. Both of whom are your friends, correct?
17 A. Absolutely.
18 Q. And I believe, according to the docket sheet, the case was
19 originally filed June 1, 1993. That's what it says, right?
02:12 20 A. That's what it says.
21 Q. June 1, 1993.
22 A. All right.
23 Q. Now, let's jump ahead to September 19th, 1996. The case
24 has been around for two years, right?
02:13 25 A. Right.

02:13 1 Q. Motion by Party Liljeberg to bring in, among the following
2 attorneys, Jacob Amato and Lenny Levenson, correct?
3 A. Right.
4 Q. You're the judge at this point, right?
02:13 5 A. Right.
6 Q. And you allow them in?
7 A. Yeah.
8 Q. Okay. I skipped one.
9 Let's go back to April 4th, 1996. Lifemark
02:13 10 brings in Joe Mole --
11 A. All right.
12 Q. -- to be one of their lawyers, right?
13 A. Yeah, right.
14 JUDGE BENAVIDES: What was the name? Was that Mole?
02:13 15 MR. FINDER: M-O-L-E, Joe Mole, Joseph Mole.
16 BY MR. FINDER:
17 Q. Then, on September 12th -- and I think we covered this on
18 September 19th, but on September 12th it looks like St. Jude
19 Hospital brings in Lenny Levenson, correct?
02:14 20 A. Right.
21 Q. But St. Jude was affiliated with Liljeberg, right?
22 A. I believe that's correct.
23 Q. And that's why a week later, on September 19th, Levenson is
24 joined by Jake Amato, right?
02:14 25 A. Yeah.

02:14 1 Q. Okay. Both of whom I believe you said typically wouldn't
2 be in this kind of case.
3 A. I'm not saying Levenson wouldn't, but Amato typically would
4 not be in this kind of case. Not that he didn't have the
02:14 5 capacity, he just typically wouldn't be in this kind of case.
6 Q. Okay. Then October 2nd, 1996 --
7 A. All right.
8 Q. -- Plaintiff Lifemark files a motion to recuse you,
9 correct?
02:15 10 A. Right.
11 Q. And that is scheduled for a hearing, if I'm reading this
12 docket order right, on October 16th, 1996, correct?
13 A. Correct.
14 Q. All right. Frankly, I can't figure out what day you heard
02:15 15 the motion to recuse. Maybe it was by submission. But it
16 looks like on October 17th -- on -- I'm sorry. October 17th
17 the hearing was held.
18 You deny Lifemark's motion to recuse, correct?
19 A. Right.
02:15 20 Q. I'm sorry?
21 A. Yes.
22 Q. All right. After Lifemark loses -- well after -- on
23 March 11th, 1997, they bring in your other friend, Don Gardner,
24 right?
02:15 25 A. Correct.

02:15 1 Q. Who also, as I believe you testified before, typically
2 wouldn't be in this kind of case?
3 A. Absolutely.
4 Q. He's a divorce lawyer, right?
02:16 5 A. Right.
6 Q. Or family lawyer. I don't mean to disparage any area --
7 kind of practice.
8 A. Call him a divorce lawyer.
9 Q. Okay. I'm only saying what he calls himself.
02:16 10 A. I understand.
11 Q. And did you think it was unusual for lawyers that don't
12 typically practice in this kind of complex litigation to, all
13 of a sudden, appear before you?
14 A. Yeah, sure do.
02:16 15 Q. Did that concern you or trouble you?
16 A. No, only to the extent that somebody thought they needed to
17 bring somebody else in.
18 Q. Well, did you ever bring it to the attention of any party
19 that, "Hey, guys, here's -- here's Amato and Creely. They've
02:16 20 given me money in the past. I want you to know about that
21 because under the canons of ethics I'm supposed to avoid the
22 appearance of impropriety and tell you about these kind of
23 things and recuse myself if the parties have an objection"?
24 A. I didn't do that.
02:16 25 Q. So, looks like Mr. Mole, on behalf of Lifemark, brings in

17 1 Don Gardner to kind of even the playing field, so to speak,
2 correct?
3 A. That's --
4 Q. For whatever reason he had, he brought in Mr. Gardner,
02:17 5 right?
6 A. Correct.
7 Q. Because he's already lost the recusal motion, right?
8 A. I don't know if that's why, but he -- he brought him in.
9 Q. Well, it followed the recusal?
02:17 10 A. It followed the recusal.
11 Q. Now, we have a non-jury trial, a bench trial, correct?
12 A. Yeah.
13 Q. And that starts June 16th, 1997?
14 A. Right.
02:17 15 Q. And that's some years after this lawsuit has been filed,
16 correct?
17 A. Yeah.
18 Q. Moving ahead to April 26th -- tried June 16th, and it looks
19 like the trial went, according to -- if I'm reading this right,
02:17 20 Smoothman --
21 A. It ran on for a period of time.
22 Q. At least until July 23rd, 1997, correct, because it says,
23 "matter taken under submission" --
24 A. Yes. Yes.
02:18 25 Q. -- 1997. And judgment was not rendered until April 26,

01:18 1 2000, if I'm reading this right --
2 A. You're reading correctly.
3 Q. -- when you had your findings of fact, conclusions of law?
4 A. Right.
02:18 5 Q. Not to beat a dead horse, Judge Porteous, but you've told
6 this panel that Amato and Creely have given you money, although
7 you can't remember specifics, and you think that Gardner has
8 given you money, but that was not disclosed to any of the other
9 lawyers in this case, correct?
02:18 10 A. That was not.
11 Q. Lenny Levenson -- I'm sorry.
12 Don Gardner was -- you stood up at his wedding,
13 correct?
14 A. I went to his wedding. I don't know if I was in it; but,
02:19 15 yeah, I went to his wedding.
16 Q. And you're the godfather of his daughter -- one of his
17 daughters, right?
18 A. Uh-huh.
19 Q. And, Judge Porteous, as we just looked on the docket sheet,
02:19 20 Liljeberg was pending in 19 -- in May, June, 1999 --
21 A. It was.
22 Q. -- when you went to Vegas courtesy of Creely and others and
23 when you got an envelope, whether it's a banker's envelope or
24 manila, some kind of envelope from the Creely-Amato law firm,
02:19 25 right?

01:19 1 A. Yes, sir, it was pending.
2 Q. That was during the pendency of that lawsuit?
3 A. Right.
4 Q. You didn't tell anybody about that, did you?
02:20 5 A. I did not.
6 MR. FINDER: May I have a moment to confer with my
7 co-counsel?
8 CHIEF JUDGE JONES: Sure.
9 *(Sotto voce discussion between counsel)*
02:20 10 MR. FINDER: Judge, may we -- Judges -- excuse me --
11 may we have a ten minute break?
12 CHIEF JUDGE JONES: Yes.
13 MR. FINDER: Thank you.
14 CHIEF JUDGE JONES: Sure. Ten minutes?
02:20 15 THE WITNESS: I -- at 2:30? I mean --
16 CHIEF JUDGE JONES: Yes, till 2:30.
17 THE WITNESS: Okay.
18 CHIEF JUDGE JONES: Thank you.
19 *(Recess taken from 2:20 p.m. to 2:35 p.m.)*
02:35 20 MR. WOODS: We're excusing Claude Lightfoot from our
21 witness list, but Judge Porteous may want to call him; so, he's
22 going to be on call for --
23 MR. WINSBERG: We'll be available if there's any need.
24 CHIEF JUDGE JONES: All right.
02:36 25 MR. WOODS: And we are also excusing Don Gardner.

02:36 1 JUDGE LAKE: I want to ask -- may I ask Judge Porteous
2 a question about Mr. Gardner?

3 MR. WOODS: Yes, your Honor. I think Mr. Finder was
4 going to finish up; and then we were going to allow him to
02:36 5 either testify or for you-all to ask questions, however -- what
6 procedure do you want to follow?

7 JUDGE LAKE: Let me just ask him a question.

8 Judge Porteous, during the Liljeberg case, while
9 you were assigned to the case, did Mr. Gardner give you any
02:36 10 money or give you any consideration of any type, in the form of
11 expenses for trips or anything of that nature?

12 THE WITNESS: No, Judge, not to my recollection, he
13 did not. Now, the bachelor party, of course, being at the same
14 time, I'm not saying that when we were in Vegas he didn't buy a
02:36 15 round of drinks or something; but to the best of my knowledge,
16 no.

17 JUDGE LAKE: Okay. So, other than the bachelor party,
18 you don't recall Gardner giving you anything of value during
19 the pendency of the Liljeberg case?

02:37 20 THE WITNESS: No, I do not, Judge.

21 JUDGE LAKE: Thank you.

22 THE WITNESS: He and I have been friends for a long --

23 JUDGE BENAVIDES: And you're fixing to let Gardner
24 leave?

02:37 25 MR. WOODS: Yes, your Honor.

... 37 1 JUDGE BENAVIDES: What do we have with respect to
2 Gardner's role, if any, in the bachelor party and the time
3 period for that?
4 MR. WOODS: Merely the fact that he attended,
02:37 5 your Honor. We have no testimony from Gardner that he gave him
6 money during that period of time.
7 JUDGE BENAVIDES: During the time that he was
8 associated with the Liljeberg case?
9 MR. WOODS: Yes, your Honor. Yes, your Honor.
02:37 10 MR. FINDER: All right. May I finish up now?
11 JUDGE LAKE: Yes.
12 BY MR. FINDER:
13 Q. Judge Porteous, I showed you Exhibit 80 when we started off
14 this morning --
02:38 15 A. You did.
16 Q. -- your oath. Do you feel you have given true faith and
17 allegiance to the United States since you've been a United
18 States District Judge?
19 A. Yes, because I've been fair and impartial in every
02:38 20 proceeding that comes before me.
21 MR. FINDER: No further questions of the witness.
22 CHIEF JUDGE JONES: Are you going to ask some more
23 questions about the casino markers?
24 MR. FINDER: About what, your Honor?
02:38 25 CHIEF JUDGE JONES: Are you going to ask more

01:38 1 questions about the casino markers?

2 MR. WOODS: We're going to have a witness testify
3 about those.

4 MR. FINDER: Not of this witness, but we are going to
02:38 5 ask more questions of other witnesses.

6 CHIEF JUDGE JONES: Okay.
7 Judge Porteous, if you had all this to do over
8 again, would you have filed different financial disclosure
9 statements?

02:39 10 THE WITNESS: Likely, Judge. I mean, maybe now in
11 hindsight some of it was -- should have been included. The
12 debt was -- the failure to list the correct debt, that was
13 right after the bankruptcy. It was like the end of the world.
14 I mean, my wife was nervous, a wreck, upset. My finances were
02:39 15 all over the paper. Everybody in America knew my finances. It
16 was just inadvertence, not any intent to hide my finances.

17 Hell, they were part of the bankruptcy record.
18 They were all over the newspaper.

19 JUDGE BENAVIDES: All right. The letter from
02:39 20 Lightfoot to the creditors made specific reference to the
21 exclusion of the -- to exclude this bank with the \$5,000 loan.
22 Why was there a specific reference to exclude them from those
23 unsecured creditors that you and Lightfoot were seeking a
24 workout agreement with?

02:40 25 THE WITNESS: Buddy Butler, as I said before, was --

02:40 1 is and was a friend of mine. To the extent possible, I wanted
2 to try and pay Buddy back all of his money.

3 JUDGE BENAVIDES: So, you don't, then, disagree
4 that -- that this bank was not put -- or reported in your
02:40 5 bankruptcy proceeding as an unsecured creditor, that that was
6 purposefully done?

7 It was done because you wanted to take care of
8 what you thought was an obligation to a good friend; but there
9 was a specific, conscious decision to exclude it from --
02:41 10 exclude them as -- from your list of unsecured creditors?

11 THE WITNESS: No, no, not from my ultimate list of
12 unsecured creditors. They were listed as -- when I filed the
13 bankruptcy. But in the potential attempt to avoid bankruptcy,
14 Claude Lightfoot attempted to work out payoffs with all of
02:41 15 these creditors where I would pay them X percentage, but I was
16 omitting Regions from that.

17 JUDGE BENAVIDES: You conscious -- it seems like there
18 was a conscious desire in the workout agreements not to include
19 the bank with the \$5,000 loan to it.

02:41 20 THE WITNESS: That's correct.

21 JUDGE BENAVIDES: And then -- and, then, there was a
22 provision, with respect to payments made prior to the
23 bankruptcy filing, which would have been -- which would have
24 shown that -- well, it's kind of like they weren't there but
02:42 25 they -- did you actually pay them off?

1 Actually, they wound up not protected, right,
2 with the rest of the unsecured creditors?
3 THE WITNESS: Who is that, Judge?
4 CHIEF JUDGE JONES: The Regions Bank.
02:42 5 JUDGE BENAVIDES: Regions Bank.
6 THE WITNESS: They were always an unsecured creditor.
7 JUDGE BENAVIDES: And you're saying that every
8 application that you've had, everything that you had in the --
9 in the bankruptcy court listed the bank?
02:42 10 THE WITNESS: Oh, in the bankruptcy court?
11 Absolutely.
12 CHIEF JUDGE JONES: I guess what rings a bit hollow --
13 and maybe you can comment on this, because it's not quite a
14 question. But you say you thought -- were thinking you wanted
02:42 15 to treat your friend fairly. Well, you didn't write down the
16 Fleet Credit Card, and that got paid off so you could maintain
17 that while the bankruptcy was going on. And, then, you also
18 continued to pay off some of the gambling debts. But you could
19 have -- you could have excluded Fleet and paid that one on the
02:42 20 side, too, even though that wouldn't be standard bankruptcy.
21 THE WITNESS: Judge, I've read Mr. Lightfoot's grand
22 jury testimony; and I see that Fleet was paid off. I see that.
23 CHIEF JUDGE JONES: By your secretary.
24 THE WITNESS: Yeah, it appears it was paid by my
02:43 25 secretary. It was. That is a card -- it was my wife's card.

02:43 1 My understanding --

2 JUDGE BENAVIDES: Did you --

3 THE WITNESS: My understanding was all the cards were
4 torn up. I did not know she had kept that card active until
02:43 5 well after the fact. And that is something she should not have
6 done, but she did. And I've got no defense for her, but she
7 did.

8 JUDGE BENAVIDES: Who is that that shouldn't have done
9 that?

02:43 10 THE WITNESS: My wife.

11 JUDGE BENAVIDES: Not the secretary? It wasn't the
12 secretary that shouldn't have paid it?

13 THE WITNESS: No, I'm not talking about the payment.
14 I'm talking about the use of the card thereafter, Judge.

02:43 15 That is just something I regret her doing. As
16 you can tell, it had some casino charges on it, probably
17 several. I don't know when that card was ultimately ended.
18 But I thought she had torn up and cut up all the cards, but
19 that apparently did not happen.

02:44 20 CHIEF JUDGE JONES: So, she paid that with her
21 separate income?

22 THE WITNESS: I don't know how it got paid, Judge. It
23 probably came out of my checking -- most of the times checks
24 written on my checking account -- I know you-all find this
02:44 25 incredible but -- I may have some checks there that I signed,

02:44 1 but the -- my wife dealt with paying the bills. So, I just --
2 CHIEF JUDGE JONES: That's not what Rhonda Danos said.
3 THE WITNESS: My home bills, my wife -- all you had --
4 I'm sure they have the checks. You'll find that her name
02:44 5 appears on 90 percent of them. So, I don't know what Rhonda
6 Danos may say about that.
7 JUDGE BENAVIDES: Well, how would -- how would
8 Ms. Danos -- I'm just trying to understand. If your wife
9 normally took care of those type of bills, how would have Danos
02:44 10 been authorized or why she would -- why would she have paid
11 that bill?
12 THE WITNESS: I don't -- I didn't know that -- till I
13 just saw it, I didn't realize it happened. I don't know,
14 Judge. I can't give you an answer. I'm just being
02:45 15 straightforward with you. I can't tell you why. I don't know.
16 What I would like to do is make a statement in
17 response to that, but I'd rather wait till they complete their
18 case before I do that.
19 CHIEF JUDGE JONES: That's fine.
02:45 20 THE WITNESS: Okay?
21 CHIEF JUDGE JONES: Yes.
22 MR. WOODS: Our next witness is Joseph Mole, and
23 Robert Creely and Amato are on their way. They were ten
24 minutes away, and they were called five minutes ago. So,
02:45 25 they -- those are our next three witness.

02:45 1 JUDGE BENAVIDES: Mole will be a short witness?
2 MR. WOODS: Joseph Mole will be a very short witness,
3 your Honor.
4 And I have offered -- based on Judge Porteous'
02:45 5 testimony, I have offered whether or not he wants to stipulate
6 to the grand jury testimony of Creely and Amato -- and I think
7 he wanted to consider that -- in lieu of -- in lieu of their
8 testimony.
9 JUDGE LAKE: Why don't you call Mr. Mole, then?
02:46 10 MR. WOODS: Yes, sir. He's just right here in the
11 hall. It will just take a moment.
12 Will you ask Mr. Mole in Room 204 to come in?
13 *(Witness being summoned to the stand)*
14 CHIEF JUDGE JONES: Is Ms. Danos coming on as a
02:46 15 witness?
16 MR. WOODS: Yes, your Honor.
17 Mr. Mole, if you would, come up here, sir.
18 The witness is going to be seated here.
19 And that's his counsel, Pat Fanning, that is with
02:47 20 him, your Honor. He's seated back there.
21 JUDGE LAKE: Raise your right hand.
22 Do you solemnly swear that the testimony that you
23 shall give in this proceeding will be the truth, the whole
24 truth, and nothing but the truth, so help you God?
02:47 25 THE WITNESS: I so swear.

10:09 1 we'll take a ten-minute break. Then you can ask questions.
2 JUDGE PORTEOUS: Thank you.
3 JUDGE LAKE: Are you through -- are you through with
4 the witness, Judge Porteous? I thought you were.
10:09 5 JUDGE PORTEOUS: Well, I thought that's what -- I'm
6 finished with the witness.
7 JUDGE LAKE: Okay.
8 JUDGE PORTEOUS: May I ask a question?
9 CHIEF JUDGE JONES: Yes.
10:09 10 JUDGE PORTEOUS: I intended to call -- well, first, do
11 you want to get into the stipulations?
12 MR. WOODS: Sure.
13 Judge Porteous has agreed to stipulate to the
14 grand jury testimony of Leonard Levenson and Chip Forstall
10:10 15 rather than we calling them as witnesses. And I believe he's
16 agreed also to stipulate to the 302, or the FBI memorandum of
17 interview, of SJ Beaulieu.
18 JUDGE PORTEOUS: With attached correspondence.
19 MR. WOODS: And with attached correspondence. Rather
10:10 20 than us calling Beaulieu, the trustee.
21 JUDGE PORTEOUS: I was just trying to make inquiry --
22 I do have a couple of witnesses I would like to call, but I
23 don't know when to possibly tell these folks to be available.
24 MR. WOODS: Our plan is to put on Jerry Fink next to
10:10 25 get into similar records; and we hope to do that within, you

OT:32 1 And Judge Porteous has some objections he wants
2 to raise as to the grand jury testimony.
3 CHIEF JUDGE JONES: All right.
4 JUDGE LAKE: So, 1 through 96, you're offering?
01:33 5 MR. WOODS: Yes, your Honor.
6 JUDGE PORTEOUS: Only two objections in general. One
7 is to the admissibility of those grand jury transcripts.
8 People have come in and testified. Now, the ones that are
9 stipulated to, obviously they'll go in, Mr. Levenson --
01:33 10 MR. WOODS: Forstall.
11 JUDGE PORTEOUS: -- Forstall, and Mr. Beaulieu, which
12 is a 302. But the others, I would object to. They clearly are
13 hearsay, and they were not subject to cross-examination.
14 And on 91 through 96, which are the summaries, I
01:33 15 would like the underlying documentation, the forms and stuff,
16 made part of the record.
17 MR. WOODS: We have no objection to that. He's
18 speaking of the exhibits against the wall, which are on a
19 separate exhibit list that's been provided, called "Underlying
01:33 20 Documents." We have no objection to those being admitted into
21 evidence.
22 JUDGE LAKE: Where do you intend to keep -- to lodge
23 the universe of admitted documents for purposes of the record?
24 MR. WOODS: I presume it's going to have to be here,
01:33 25 in the Fifth Circuit somewhere, your Honor.

**In The Senate of The United States
Sitting as a Court of Impeachment**

In re:)
Impeachment of G. Thomas Porteous, Jr.,)
United States District Judge for the)
Eastern District of Louisiana)

**JUDGE G. THOMAS PORTEOUS, JR.'S OBJECTION TO THE HOUSE OF
REPRESENTATIVES' NOTICE OF INTENT TO INTRODUCE AT TRIAL HIS
TESTIMONY BEFORE THE FIFTH CIRCUIT SPECIAL COMMITTEE**

NOW BEFORE THE SENATE, comes respondent, the Honorable G. Thomas Porteous, Jr., a Judge of the United States District Court for the Eastern District of Louisiana, by and through counsel, and files this Objection to the House of Representatives' Notice of Intent to Introduce at Trial Judge Porteous's Testimony Before the Fifth Circuit Special Committee (the "Notice of Intent").

INTRODUCTION

This is the first time in United States history that an official has been impeached after testifying under a grant of immunity. Judge Porteous testified under a grant of statutory immunity before the Judicial Conference of the Fifth Circuit about matters related to this impeachment proceeding. In that very Fifth Circuit proceeding, Judge Porteous was assured by Judge Benavides, a member of the Special Committee hearing panel, that none of his testimony could be used against him in satisfaction of the Fifth Amendment to the Constitution. *See* Exhibit 1 to Judge Porteous's Motion to Exclude Immunized Testimony (filed July 21, 2010) (hereinafter "Ex. 1") (Transcript of Judge Porteous's testimony before the Fifth Circuit). He also received confirmation of this guarantee from the Judicial Council's appointed special counsel, Larry Finder. *See id.* at 47. Despite these guarantees, the House now proposes to Judge

Porteous's own testimony, provided under immunity, against him as a basis for his removal from office. The House's proposed use of this immunized testimony is contrary to all basic concepts of due process, degrades the constitutional process and tarnishes the image of the United States Senate. It premises a constitutional process of removal on the violation of fundamental constitutional rights.

BACKGROUND

After eight years of investigations in which various judges and lawyers were investigated (including Judge Porteous), the Department of Justice ("DOJ") determined that it did not have evidence that would warrant bringing criminal charges against Judge Porteous. Instead, the DOJ filed a complaint with the Judicial Council of the Fifth Circuit. The Fifth Circuit Judicial Council (the "Fifth Circuit") convened a Special Investigatory Committee to review the DOJ's allegations against Judge Porteous. The Fifth Circuit subsequently appointed a three-judge panel to hold a hearing on Monday, October 29, 2007, chaired by Chief Judge Edith Jones. The hearing was held over the strenuous objections of Judge Porteous (representing himself at the time) who was deprived of the very rights that he and every other judge grant to all criminal defendants in a Federal court.

Judge Porteous was justifiably concerned about the manner in which the Fifth Circuit compelled his testimony with a grant of immunity under 18 U.S.C. §§ 6002 and 6003. *See* Ex. 1 at 32-34. Remarkably, Chief Judge Jones required Judge Porteous to testify before he had received the actual order granting him immunity and before he could even review the extent of the immunity granted. At the hearing, Ron Woods, appointed as co-counsel for the Fifth Circuit, admitted to Judge Jones that Judge Porteous did not receive the order before the hearing—despite the fact that the order had been signed *three weeks* before the hearing. *Id.* at 33; *see also*

Exhibit 2 to Judge Porteous's Motion to Exclude Immunized Testimony (filed July 21, 2010) (hereinafter "Ex. 2") (October 5, 2007 Order granting Judge Porteous statutory immunity). Judge Porteous asked for a continuance so that he could review the order, correctly noting that witnesses are generally allowed to see immunity orders before testifying. *See* Ex. 1 at 34. Judge Jones, however, responded that "immunity is better than non immunity, sir. Continuance is denied. You may take the stand." *Id.* Indeed, this manner of compelling testimony was so unclear and unusual that another member of the panel, Judge Benavides, felt the need to clarify that Judge Porteous was granted immunity and would not be testifying but for that grant of immunity. *See id.* at 46. In response, Larry Finder, co-counsel for the Judicial Council, agreed and made clear that the grant of statutory immunity is co-extensive with Judge Porteous's Fifth Amendment right against self-incrimination. *Id.* at 47.

ARGUMENT

Judge Porteous testified in the Fifth Circuit proceeding only because he had received immunity to the full extent of his Fifth Amendment rights. Using his previously immunized testimony in this proceeding would violate Judge Porteous's fundamental rights under the Fifth Amendment of the United States Constitution, as well as the prior practices of the Senate. First, the Supreme Court has firmly established that the extent of statutory immunity is coextensive with the scope of the privilege against self-incrimination under the Fifth Amendment. Second, clear, unmistakable Supreme Court precedent establishes that the Fifth Amendment applies in civil proceedings such as this impeachment trial. Third, no written order by an appellate court judge can reduce the scope of Fifth Amendment protection below the floor set by the Constitution and the Supreme Court. Finally, the House of Representatives' reliance on the

admission of statements by Judge Claiborne in a prior impeachment trial is unavailing; those admissions were not of immunized testimony.

I. Judge Porteous Only Testified Before the Fifth Circuit Because He Was Informed That His Immunity Extended to the Full Extent of the Fifth Amendment, Which Applies in Impeachment Proceedings.

The transcript of the Fifth Circuit proceedings clearly demonstrate that Judge Porteous was forced to testify after being informed of an immunity and compulsion order. He, Mr. Finder, and Judge Benavides all agreed that his testimony was compelled and entirely protected under the Fifth Amendment. *See* Ex. 1 at 46-47. This belief was premised upon the Supreme Court’s declaration that it is only constitutional to compel testimony when the witness has been afforded all of the protections of the Fifth Amendment. As the Supreme Court held in *Kastigar v. United States*, 406 U.S. 441 (1972), statutory immunity “from use and derivative use is coextensive with the scope of the privilege against self-incrimination.” *Id.* at 453.

The Senate has always structured impeachment proceedings on federal standards and constitutional protections apply to such proceedings. Indeed, federal courts and Chairman McCaskill agree that impeached officials enjoy the protections of the Due Process Clause of the Fifth Amendment in impeachment trials. As one federal court has stated, impeachment trials “must be conducted in keeping with the basic principles of due process that have been enunciated by the courts and ironically, by the Congress itself,” and “[f]airness and due process must be the watchword whenever a branch of the United States government conducts a trial, whether it be in a criminal case, a civil case or a case of impeachment.” *Hastings v. United States*, 802 F. Supp. 490, 492, 504 (D.D.C. 1992), *vacated*, 988 F.2d 1280 (1993). Senator McCaskill acknowledged that that principle governs this case, stating that the “guiding force of this matter has to be due process.” *See* Rules and Administration Meeting of the Impeachment

Trial Committee Against Judge G. Thomas Porteous, Jr., April 13, 2010.¹ In the same hearing, Senator Hatch agreed that “we must proceed with the utmost seriousness and dedication to fairness.” *See id.* In order to maintain that dedication to fairness, the Senate must respect Judge Porteous’s fundamental constitutional rights, including his Fifth Amendment rights.

The Supreme Court has consistently held that respect for Fifth Amendment rights is appropriate and necessary not only in criminal cases but also in certain types of civil proceedings that share elements of criminal proceedings, such as proceedings that would deprive a person of things of value – such as his judicial office – because of acts he has allegedly taken. The Supreme Court has labeled such proceedings “criminal in nature” and has identified them as cases where the defendant stands to lose a property interest based on alleged misconduct. Thus, in *Lees v. United States*, 150 U.S. 476 (1893), the defendants faced \$1,000 in civil penalties for violating an act of Congress that prohibited “importation and migration of foreigners and aliens” as contract laborers. *Id.* at 478. The Supreme Court stated that “[t]his, though an action civil in form, is unquestionably criminal in its nature, and in such a case a defendant cannot be compelled to be a witness against himself.” *Id.* at 480.

The Court in *Lees* noted that it had previously decided this principle in *Boyd v. United States*, 116 U.S. 616 (1886), *overruled on other grounds*, 387 U.S. 294 (1967). *See Lees*, 150 U.S. at 480-81. In *Boyd*, the Court held that “proceedings instituted for the purpose of declaring the forfeiture of a man’s property by reason of offenses committed by him, though they may be civil in form, are in their nature criminal.” *Boyd*, 116 U.S. at 634. The *Boyd* Court also held that since the proceeding was of a criminal nature, the proceeding implicated the defendants’ rights under both the Fourth and Fifth Amendments. *Id.* at 633.

¹ A record of the meeting is available at:
http://www.senate.gov/general/impeachment_hearing_porteous_041310.htm

Almost a century after first holding that the Fifth Amendment applies in some civil proceedings, the Supreme Court reaffirmed this principle, quoting *Boyd* and holding that “the Fifth Amendment applies with equal force” in cases where “money liability is predicated upon a finding of the owner’s wrongful conduct[.]” *United States v. United States Coin & Currency*, 401 U.S. 715, 718 (1971). Finally, in 1980, the Supreme Court once again recognized that the Fifth Amendment is implicated in those types of civil cases where monetary penalties are involved. See *United States v. Ward*, 448 U.S. 242 (1980). In *Ward*, the Supreme Court expressly recognized that not just the Fifth Amendment, but the Fifth Amendment privilege against self-incrimination itself, applies in some types of civil proceedings. See *id.* at 253-54 (stating that “[t]he question before us, then, is whether the penalty imposed in this case . . . is nevertheless so far criminal in its nature as to trigger the Self-Incrimination Clause of the Fifth Amendment”) (internal quotation omitted).

Just as impeachment trials have been analogized to criminal proceedings, these trials are clearly as substantial as the civil proceedings in which the Supreme Court has held that the Fifth Amendment applies. Judge Porteous is accused of misconduct, and if the Senate convicts, he will lose his most important property interests: his life tenured judgeship, salary, and pension.² If convicted, he will also face the stigma of history as one of a handful of federal judges impeached by the House and convicted by the Senate. This is a clear case in which “proceedings instituted for the purpose of declaring the forfeiture of a man’s property by reason of offenses committed by him, though they may be civil in form, are in their nature criminal.” *Boyd*, 116 U.S. at 634.

² The Supreme Court has previously held that a tenured professorship can constitute a property interest when determining whether a state college violated a professor’s procedural due process right by depriving him of his position without a hearing. See *Perry v. Sindermann*, 408 U.S. 593, 603 (1972).

The text of the Constitution itself makes many explicit and implicit references to the criminal nature of an impeachment proceeding. Most obviously, the exclusive grounds for impeachment are either crimes or framed in criminal terminology: “Treason, Bribery, or other high Crimes and Misdemeanors.” U.S. CONST. art. II, § 4. Similarly, Article III expressly excepts “cases of impeachment” from the requirement that the “Trial of all crimes . . . shall be by Jury,” an exception which would be unnecessary surplusage³ if impeachments were not otherwise within the scope of “Trial[s] of all Crimes.” U.S. CONST. art. III, § 2, cl. 3. Finally, the Senate impeachment clause of Article I, Section 3 frames impeachments as trials to occur before the Senate, which can result in a “conviction.” Indeed, the House’s own expert witness, Professor Akhil Amar, stated that “[i]mpeachment is a quasi-criminal affair, in which the Senate, sitting as a court, is asked to convict the defendant of high criminality or gross misbehavior[.]” Akhil R. Amar, *A Symposium on the Impeachment of William Jefferson Clinton: Reflections on the Process, the Results, and the Future*, 28 HOFSTRA L. REV. 291, 307 (1999).

Under *Kastigar*, the question is not whether impeachment proceedings are criminal cases. Rather, the question is whether impeachments are included in that class of proceedings sufficiently “criminal in nature” that the Fifth Amendment’s protections apply. In light of the relevant Supreme Court precedent, the constitutional text, and the scholarship of the House’s own expert witness, the answer to that question is an obvious yes.

Despite this clear authority demonstrating that the Fifth Amendment applies in Senate impeachment trials, the House has stated that there is no credible basis to argue that “the Senate should not consider Judge Porteous’s . . . immunized Fifth Circuit testimony.” See 111 Cong.

³ Supreme Court precedent establishes that no term in the Constitution should “be treated as mere surplusage, for ‘[i]t cannot be presumed that any clause in the Constitution is intended to be without effect.’” *District of Columbia v. Heller*, 128 S. Ct. 2783, 2826 (2008) (quoting *Marbury v. Madison*, 5 U.S. 137 (1803)).

Rec. S2358 (Apr. 15, 2010); *see also* Exhibit 3 to Judge Porteous's Motion to Exclude Immunized Testimony (filed July 21, 2010) (hereinafter "Ex. 3") (April 21, 2010 Letter from Alan Baron correcting the Senate Record). In making that argument, the House disregards Supreme Court case law, relevant constitutional text, and the scholarly analysis by its own expert, Professor Amar.⁴

II. Chief Judge Jones's Order Granting Immunity Cannot Reduce the Scope of Statutory Immunity Under *Kastigar* and other Supreme Court Case Law.

In the House's Notice of Intent, it emphasizes that Judge Porteous's grant of immunity was limited to protection against use in purely criminal proceedings. This logic is inherently flawed for two reasons. First, it assumes that Judge Jones had the authority to reduce the extent of statutory immunity below the level set by the Supreme Court. Taken together, the Supreme Court's decisions in *Kastigar* and the *Boyd* and *Lees* line of cases stand for the proposition that statutory immunity provides a right coextensive with the Fifth Amendment right against self-incrimination which applies in some types of civil proceedings. With due respect to Chief Judge Jones, she simply lacks the authority to compel a witness to testify against himself without granting the same degree of protection required by the Constitution and the Supreme Court.

Second, Judge Porteous was never given the opportunity to review the immunity order before he was compelled to testify. He testified under the assumption – articulated by Judge Benavides and Mr. Finder – that his grant of statutory immunity was coextensive with the privilege against self-incrimination, as mandated by Supreme Court precedent. This assumption

⁴ Incredibly, the House argues that the concern about self-incrimination should not apply to Judge Porteous, and his testimony may be used against him, because he is a "highly educated Federal judge." *Id.* This argument suggests that a person's education, intellect, achievement, and long service should be held against him and somehow diminish his Fifth Amendment rights. This appalling suggestion that class or education should determine the extent of a citizen's rights under the United States Constitution should shock the conscience of the Senate, as it should shock all Americans.

was only rational, since he had no opportunity to review the immunity order. Under these circumstances, where Judge Porteous had no opportunity to appeal or otherwise challenge the order granting immunity and compelling his testimony, it would be fundamentally unfair to reduce the extent of his immunity to a level lower than the full constitutional standard espoused by the Supreme Court.

III. The Admission of Judge Claiborne's Prior Admissions in His Impeachment Trial is Irrelevant and Misleading.

In its Notice of Intent, the House relies heavily on a single prior case: the impeachment of Judge Claiborne. The House cites the admission of Judge Claiborne's prior statements in his impeachment trial as precedent supporting the admission of Judge Porteous's immunized testimony. However, *Judge Claiborne's prior admission was not immunized testimony*. There was no Fifth Amendment question regarding the admissibility of Judge Claiborne's prior testimony. In fact, Judge Claiborne voluntarily waived his right to avail himself of the protections of the right against self-incrimination when he testified at his own criminal trial. Judge Porteous has made no such waiver. Most tellingly, Judge Claiborne did not even oppose the admission of his prior testimony in the impeachment trial. Finally, Judge Claiborne had not one but *two criminal trials* where testimony was subject to all of the federal rules on discovery and admissibility – and adversarial examination. In this case, prosecutors determined that there was insufficient evidence to bring any criminal charges. Judge Porteous was then forced to testify before the Fifth Circuit under a grant of immunity; and the House now seeks to have that immunized testimony used against him in an impeachment trial.

The House's Notice of Intent compounds the false analogy between Judge Porteous's immunized testimony and Judge Claiborne's non-immunized statements by belaboring the utterly irrelevant point that a party's prior testimony can be admissible in a federal trial as a party

opponent admission under Federal Rule of Evidence 801(d)(2). Anyone who argues that an exception to the hearsay rule in the Federal Rules of Evidence can somehow nullify the Bill of Rights has a bizarre view of the United States Constitution. Such arguments deserve no respect and require no further attention.

The admission of the immunized testimony of Judge Porteous would undermine the credibility of the impeachment process and create new precedent that would allow prosecutors to strip away constitutional protections in the future. Under the House's approach, judges who have never been charged with a crime could be forced to give evidence under a grant of immunity in an administrative setting and then face those statements as the basis for their removal before Congress. In the history of this country, no House manager has seen the need to demand such use of compelled testimony and the Senate should preserve this history by denying the instant motion.

CONCLUSION

WHEREFORE, Judge Porteous respectfully requests that the Senate exclude from evidence all of Judge Porteous's immunized testimony before the Fifth Circuit Judicial Conference Special Investigatory Committee and exclude any testimony, documents, or other evidence derived from that immunized testimony.

Respectfully submitted,

/s/ Jonathan Turley
Jonathan Turley
2000 H Street, N.W.
Washington, D.C. 20052
(202) 994-7001

1700

/s/ Daniel C. Schwartz

Daniel C. Schwartz

John Peirce

P.J. Meitl

Daniel T. O'Connor

Ian L. Barlow

BRYAN CAVE LLP

1155 F Street, N.W., Suite 700

Washington, D.C. 20004

(202) 508-6000

Counsel for G. Thomas Porteous, Jr.
United States District Court Judge for the Eastern
District of Louisiana

Dated: July 28, 2010

CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2010, I served copies of the foregoing by electronic means on the House Managers, through counsel, at the following email addresses:

Alan Baron – abaron@seyfarth.com

Mark Dubester – mark.dubester@mail.house.gov

Harold Damelin – harold.damelin@mail.house.gov

Kirsten Konar – kkonar@seyfarth.com

Jessica Klein – jessica.klein@mail.house.gov

/s/ Ian L. Barlow